

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3  
4 UNITED STATES OF AMERICA, )

No. 14-CR-00129 WJ

5 Plaintiff, )

6 vs. )

Bonito Courtroom

7 MICHAEL DAMEON BLACKBURN )

Albuquerque, New Mexico

8 Defendant. )

wednesday, October 7, 2015

8:30 A.M.

9  
10 TRANSCRIPT OF PROCEEDINGS

11 MOTION TO SUPPRESS HEARING, VOLUME II

BEFORE THE HONORABLE WILLIAM P. JOHNSON

12 UNITED STATES DISTRICT JUDGE

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1 (In Open Court at 8:31 A.M.)

2 THE COURT: We are back on record in United  
3 States vs. Blackburn. We left off with Ms. Katze's  
4 Cross-Examination of Special Agent Breen. So you may go  
5 ahead and resume the witness stand.

6 THE WITNESS: Yes, sir.

7 CROSS-EXAMINATION CONTINUED

8 BY MS. KATZE:

9 Q. Good morning. Agent Breen, I think when we left off,  
10 one of the breaks that we took, you were inside the house  
11 at Wyoming when we left off. So I just want to clarify a  
12 couple of things. When you got there that morning, it was  
13 dark out?

14 A. No, I don't believe it was still dark out. I think  
15 7:15, I think it had started to lighten up.

16 Q. Okay. So lighten up, because I looked up and sunrise  
17 was at 7:08 that day. But does that make sense? Does  
18 that mean the sun was starting to come up?

19 A. I'm sorry; I don't understand your --

20 Q. When you guys met at the staging area, was it dark?

21 A. Oh, yes. It was 6:00 something when we met at the  
22 staging area.

23 Q. Okay. So with respect to the -- you did a Criminal  
24 Complaint; right --

25 A. Yes, ma'am.

1 Q. -- for this case? Okay. So in your Criminal  
2 Complaint, you said: "Once at the residence, Detective  
3 Storey made contact with Michael Dameon Blackburn and two  
4 young children." I hadn't heard that in your testimony  
5 yesterday, so I was just wondering when that happened.

6 A. I'm sorry, ma'am, I'd have to refer to the Complaint  
7 to see what you're talking about.

8 Q. Okay, I'll show it to you.

9 MS. KATZE: May I approach, your Honor?

10 THE COURT: Sure.

11 BY MS. KATZE:

12 Q. It's highlighted there.

13 A. Okay.

14 Q. Can you explain to us what happened and what that  
15 means? You said, again: "Once at the residence,  
16 Detective Storey made contact with Michael Dameon  
17 Blackburn and two young children."

18 A. When we all came inside, we were speaking to him.  
19 I'm assuming what I meant by that was that when Jake  
20 Storey and Josh Hawkes entered the house, that they met  
21 Michael. Detective Storey and Detective Hawkes were the  
22 two that did the security sweep upstairs, so they probably  
23 encountered Jane Doe No. 1 and John Doe No. 1 at that  
24 time.

25 Q. Okay. Well, you specifically said Detective Storey.

1 A. But if you look on the page prior to that, I talk  
2 about how we all -- the Affiant plus these people all went  
3 inside.

4 Q. That's what I was wondering. You said all seven of  
5 you went inside, but then you specifically just said,  
6 Detective Storey made contact with Michael Dameon.

7 A. Okay.

8 Q. What specifically happened with Detective Storey and  
9 Michael Dameon?

10 A. I couldn't speak to that. I just know that I was  
11 probably saying that when he came in, because Detective  
12 Hawkes and Detective Storey both came in. So I'm assuming  
13 what I meant by that was, while we were speaking with  
14 Mr. Blackburn at the front door, they came in and went  
15 upstairs, that he would have, at that time, encountered  
16 Michael, or encountered Mr. Blackburn, and then went  
17 upstairs and found the kids.

18 Q. Okay. Because out of the seven people, you  
19 specifically said -- and let me move on from that for a  
20 second.

21 Yesterday in your Direct Examination, referring to  
22 the interview that took place at the station, you said  
23 something to the effect that, well, we knew he wanted to  
24 talk to us because we had -- let me just get what your  
25 words were here.

1 All right. You said that you knew he wanted to talk  
2 to you because you had had contact with him before. And  
3 then I would just again talk about your Complaint that you  
4 filled out. You said: "Blackburn was interviewed by  
5 Affiant." That's you; right?

6 A. Yes, ma'am.

7 Q. "And Detective Storey and HSI agents on scene."

8 A. Okay.

9 Q. Could you tell us what happened with that interview?

10 A. When we spoke to him on scene, you mean?

11 Q. Yes. First let me ask you, you, Detective Storey,  
12 and who are the other HSI agents are who interviewed  
13 Mr. Blackburn on scene?

14 A. I believe what it should have said is, spoke to, but  
15 we can go with interview. We spoke to him on scene and  
16 just talked to him about different things that were going  
17 on.

18 I know that Detective Storey spoke to him about his  
19 clothing, getting him dressed and stuff like that. And  
20 then the other times that I would say I spoke to him would  
21 be involving like, why are you here. Okay, you're the  
22 babysitter, where are the parents? About the children,  
23 things like that.

24 Q. All right. Did you tell him why you guys were there?

25 A. Yes, ma'am.

1 Q. And what did you say?

2 A. That we were there for a welfare check on the  
3 children.

4 Q. Is that all you said?

5 A. Initially, yes, that that was the original reason  
6 that we went to the house.

7 Q. Well, Keifer Orfield testified yesterday that you  
8 said something about child pornography.

9 A. That was later when the images were discovered.

10 Q. So at that point, people -- who said what about child  
11 pornography?

12 A. Probably when Agent Langer spoke to me, that he had  
13 found images on the Defendant's phone.

14 Q. But then you spoke to other people in the house about  
15 the child pornography?

16 A. No. I believe I would have only spoke to Detective  
17 Sabaugh about it. Well, I might have said something else  
18 to Agent Langer about the images and saying that they were  
19 the kids.

20 But, no, we never spoke specifically to Keifer  
21 Orfield in the time that I was there about child  
22 pornography or anything like that. We did speak to him  
23 about it I think during the interview at the station.

24 Q. But you don't know how he would have heard that at  
25 the house? Because that's what he testified, right,

1 yesterday, that he understood that you were there because  
2 you were looking for child pornography?

3 A. I think what he said was that we were there because  
4 of child abuse, child assault, and possible child  
5 pornography.

6 Q. Right. So how would he have heard that?

7 A. I can't answer that, ma'am.

8 Q. When you first got to the house, we already talked  
9 about this, but when you first got to the house, you said  
10 that you asked for consent to come in.

11 A. Yes, ma'am.

12 Q. Can you tell us, you asked for consent for what?  
13 what did you tell Mr. Blackburn at the door?

14 A. Well, it was Detective Sabaugh that spoke to  
15 Mr. Blackburn at the door.

16 Q. What did she say?

17 A. That we were there for a welfare check, and since  
18 it's a knock and talk, it's implied that we need consent.

19 Q. It's implied to who?

20 A. To other law enforcement, to ourselves, as a part of  
21 the Ops Plan. Without having legal authority to bypass  
22 the door, if Michael hadn't granted us consent to go in,  
23 we wouldn't have gone in.

24 Q. But what did you tell him you needed consent for?

25 A. Oh, we would like to --

1 Q. You get to the door and you say, hi, we're law  
2 enforcement.

3 A. Yes. She introduced herself, said, I'm Detective  
4 Sabaugh from BCSO, we're here -- I believe she referred to  
5 it as a welfare check on the children. We'd like to come  
6 inside and speak to you, check on the children, is that  
7 okay?

8 Q. And so at that time, neither of you said anything  
9 that there was any suspicion of criminal activity, or that  
10 anybody could potentially be a suspect?

11 A. No, not to my knowledge, ma'am. I don't remember  
12 saying that.

13 Q. Okay. So before we leave the house and go to the  
14 station, I don't think -- at some point Agent Sabaugh goes  
15 upstairs to Michael Blackburn's bedroom to get clothes for  
16 the girl; is that correct?

17 A. I don't know if that's correct. I thought that  
18 Detectives Storey and Hawkes had got clothes for the  
19 children.

20 Q. So you think that Detectives Hawkes and Storey went  
21 into Mr. Blackburn's bedroom and got clothes for the  
22 child?

23 A. No, I think he went in the kids' bedroom and got  
24 clothes for the child. I don't think anybody ever  
25 referred to it as Michael's bedroom.

1 Q. Did you ever have an opportunity to see the whole  
2 house?

3 A. Briefly. Like I said, I was coordinating a lot of  
4 things where I was outside and trying to make phone calls  
5 and stuff.

6 Q. You're the Case Agent; right?

7 A. Yes, ma'am.

8 Q. Did you eventually go back and execute the search  
9 warrant?

10 A. Oh, no, I didn't. I was actually in on the  
11 interviews.

12 Q. Are you responsible for basically what goes on in the  
13 case as the Case Agent?

14 A. Yes, I would assume.

15 Q. So correct me if I'm wrong, it sounds like you didn't  
16 know that it's the same bedroom, that Mr. Blackburn and  
17 the children slept in one bedroom. Did you know that?

18 A. Oh, yes, I knew that.

19 Q. Okay. So when I referred to Mr. Blackburn's bedroom,  
20 it's the same as the children's bedroom; right?

21 A. Yes, it is.

22 Q. So two officers went upstairs to Mr. Blackburn and  
23 the children's bedroom to get clothes, to the best of your  
24 knowledge?

25 A. No, I can't specifically say, because you had just

1 said that you thought Detective Sabaugh had done it. So I  
2 can't specifically say who got clothes for Jane Doe No. 1.

3 Q. So you don't know who went, but you know that some  
4 law enforcement agent went upstairs to Mr. Blackburn's  
5 bedroom?

6 A. Yes.

7 Q. Okay. And Agent Altamirano went up to  
8 Mr. Blackburn's bedroom to get the telephone that Franque  
9 told her about; right?

10 A. That's not how I understood it to happen. I  
11 understood that Franque went up and got the phone.

12 Q. So did you understand that Agent Altamirano went  
13 upstairs at all?

14 A. I think she went with Franque, yes, ma'am.

15 Q. Okay. So Agent Altamirano went with Franque --

16 A. Ms. Hatten.

17 Q. I'm sorry?

18 A. Ms. Hatten, but I don't know -- Franque; Ms. Hatten.

19 Q. Ms. Hatten. So Agent Altamirano went with Franque  
20 Hatten upstairs to Mr. Blackburn's bedroom to get the  
21 telephone, Mr. Blackburn's telephone; correct?

22 A. I don't know if the phone was in the kids' bedroom or  
23 the parents' bedroom. I just know that Agent Altamirano  
24 went upstairs with Franque, Franque got the phone, gave it  
25 to her, and they came back downstairs.

1 Q. Okay. So then it sounds like Agent Altamirano, who  
2 is going to testify later, is the one who can testify to  
3 that? You don't know the answer to that; right?

4 A. No, I don't know specifically where the phone was  
5 located, ma'am.

6 Q. Okay. So you testified that you transported Michael  
7 Blackburn to the station at 8:30 in the morning --

8 A. Yes, ma'am.

9 Q. -- correct? And you arrived at 7:15, so you had been  
10 there about an hour and 15 minutes; right?

11 A. Yes, ma'am.

12 Q. And you talked a little bit about where people were,  
13 but there were seven agents in the house for an hour and  
14 15 minutes. Do you know what all these seven agents were  
15 doing for that hour and 15 minutes?

16 A. Well, I know that Agent Langer and Agent Altamirano  
17 were in the living room most of that time with Franque  
18 Hatten, Keifer Orfield, Michael Blackburn. I don't think  
19 they were all in the house for that entire time, because  
20 other people stepped out to either make phone calls or try  
21 to get stuff going with like CYFD.

22 I know that myself and Theresa, Detective Sabaugh,  
23 were outside a lot of that time, like on the phone with  
24 our superiors and then CYFD, Victim Witness Coordinator,  
25 trying to get in touch with All Faiths to see if we could

1 get emergency interviews for the kids, and stuff like  
2 that. So, no, I can't account for where everyone was for  
3 the entire time in the building.

4 Q. For the hour and 15 minutes. You didn't have a  
5 search warrant; right?

6 A. No, ma'am.

7 Q. And you didn't apply for one? You didn't apply for a  
8 search warrant?

9 A. Not until later that night, yes, ma'am.

10 Q. So you do know how to apply for a search warrant?

11 A. Oh, certainly.

12 Q. Because like you said, later you applied for a search  
13 warrant for the phone; right?

14 A. Yes, ma'am.

15 Q. And did you apply for other search warrants?

16 A. Yes, ma'am. I applied for a search warrant for both  
17 e-mails, for the phone, and for the residence.

18 Q. So at the house, did you ever read Mr. Blackburn his  
19 Miranda warnings?

20 A. No, ma'am.

21 Q. Did anybody give him his Miranda warnings at the  
22 house?

23 A. No, ma'am.

24 Q. So when you transported him to the station at 8:30,  
25 at what point did you search him?

1 A. Did we search him?

2 Q. Yes. Did you search him in the house before you  
3 cuffed him? Did you search him when you got to the  
4 station?

5 A. Agent Bonza searched him at the house prior to us  
6 transporting him.

7 Q. And then you handcuffed him?

8 A. I think he cuffed him first. But, yes.

9 Q. Okay. And was he cuffed in front or in back?

10 A. In back.

11 Q. And then you said he was put in your car?

12 A. Yes, ma'am.

13 Q. And was he still cuffed in your car?

14 A. Yes, ma'am.

15 Q. Behind him?

16 A. Yes, ma'am.

17 Q. And then you brought him down to the station?

18 A. Yes, ma'am.

19 Q. And you put him in the room that we saw in the video;  
20 right?

21 A. Yes, ma'am.

22 Q. And is that a locked room?

23 A. Yes, it is.

24 Q. So as he sits in there, he couldn't get out on his  
25 own?

1 A. No, ma'am. He would have had to have knocked or made  
2 some sort of gesture.

3 Q. Asked for help or something to get out?

4 A. Yes, ma'am.

5 Q. So he was in there by himself the entire time; right?

6 A. Yes, ma'am.

7 Q. And you didn't come in to interview him until, I  
8 think we saw in the video 12:30?

9 A. Yes, something like that. 12:31, I think.

10 Q. And you didn't actually give him something to eat  
11 until 2:00?

12 A. Yeah. None of us had anything to eat until the  
13 Sergeant brought pizza.

14 Q. At 2:00; right?

15 A. Yes, ma'am.

16 Q. So you and Agent Sabaugh finally came into the room  
17 at 12:30?

18 A. Okay.

19 Q. So it had been four hours since he had been  
20 handcuffed and transported to the station; right?

21 A. Okay.

22 Q. Does okay mean that's correct?

23 A. Yes, ma'am.

24 Q. So when you went in at 12:30, you still had your  
25 weapon on?

1 A. Yes, ma'am.

2 Q. And Detective Sabaugh had hers on, as well; right?

3 A. No, I don't believe she had her weapon on at that  
4 time.

5 Q. I'll play a little video clip, and we'll just look at  
6 it. So I'll just ask, in a minute, can you be ready? Oh,  
7 you're ready? Okay.

8 So, when you got in there, you handed Michael  
9 Blackburn a sheet of paper called Statement of Rights?

10 A. Yes, ma'am.

11 Q. And these are a list of important Constitutional  
12 rights?

13 A. Yes, they are.

14 Q. And they're frequently referred to as Miranda  
15 warnings; right?

16 A. Yes, ma'am.

17 Q. And that's because they come from the United States  
18 Supreme Court case of Miranda?

19 A. The Arizona, yes, ma'am.

20 Q. And so when you were in there, you didn't read these  
21 important Constitutional rights to Mr. Blackburn; right?

22 A. No, ma'am.

23 Q. And Officer Sabaugh didn't read them?

24 A. No, ma'am.

25 Q. You just handed him this piece of paper; right?

1 A. Yes, ma'am.

2 Q. Now, if you had read him the rights, you would agree,  
3 then, there wouldn't be a question of whether he had been  
4 informed of his rights under the Miranda decision; right?  
5 If you had actually read them and we saw in the video that  
6 you had read them, there wouldn't be a question?

7 A. I don't think there's a question. I think he read  
8 them.

9 Q. You think he read them?

10 A. I think he read them.

11 Q. Well, we'll talk about whether he read them, but I'm  
12 saying, you did not read them?

13 A. No, I did not.

14 Q. And would you agree with me if you had read them,  
15 there wouldn't be a question, because we would hear that  
16 you read them and we would know that he was advised of his  
17 rights; is that correct?

18 A. No, I don't like the way you're phrasing that. I  
19 think the way you're assuming it isn't the way I would  
20 assume it. You're asking me to agree with you on  
21 something.

22 Q. So you don't agree that if we saw you read them, we  
23 would know he was informed of his rights?

24 A. I guess I know he was informed of his rights, but you  
25 would know better, would be a better way to phrase it.

1 Q. Okay. So somebody looking at and evaluating your  
2 conduct, if they saw you reading the rights, there  
3 wouldn't be a question; right?

4 A. There would not be a question.

5 Q. They would know you had read them and he was advised  
6 of his rights?

7 A. Yes, ma'am.

8 Q. Now, it sounds like you've had a lot of training,  
9 you've worked with different agencies, so what kind of  
10 training have you had on the Miranda decision?

11 A. We had Constitutional Law in both the United States  
12 Border Patrol Academy, which was about 20 weeks, and then  
13 again briefly in the Air Marshal Academy, because  
14 obviously that wasn't a primary focus. We were more of a  
15 security force. And then again in the Criminal  
16 Investigator Academy, and then in ICAC.

17 Q. Okay. So it sounds like you had a lot of training on  
18 this important Supreme Court decision; right?

19 A. Yes, ma'am.

20 Q. And the Supreme Court found that if somebody is in  
21 custody and they're being interrogated, it's essential  
22 that they be advised of their Constitutional rights?

23 A. Yes, ma'am.

24 Q. And on the form that you all use -- you're using that  
25 Immigration and Customs Enforcement form; correct?

1 A. Yes, ma'am.

2 Q. So there are seven of them; right? Seven -- let me  
3 just go through them.

4 A. Okay.

5 Q. "Before we ask you any questions, it is my duty to  
6 advise you of your rights."

7 A. Uh-huh.

8 Q. What does that mean to you?

9 A. Before I ask him any questions, he needs to be aware  
10 of his Miranda rights.

11 Q. Right. And the reason that's important, right, is  
12 because an individual who may be a suspect in a crime, or  
13 is a person of interest, needs to know that they have a  
14 right not to talk to law enforcement; right?

15 A. Yes, ma'am.

16 Q. And because sometimes the presence of law enforcement  
17 can be intimidating or overbearing; right?

18 A. Yes, ma'am.

19 Q. And somebody might feel like, oh, I have to answer  
20 these questions because law enforcement is asking me?

21 A. Yes, ma'am.

22 Q. But the Supreme Court thought it was important enough  
23 that you law enforcement had to advise that citizen that  
24 they didn't have to talk to you?

25 A. Yes, ma'am.

1 Q. And also in that sentence is that it's your duty to  
2 advise of their rights; right?

3 A. Yes, ma'am.

4 Q. The second line says: "You have the right to remain  
5 silent." what does that mean to you?

6 A. That he has the right not to talk.

7 Q. And the whole reason that's important, right, is what  
8 we were talking about, people might feel like they have to  
9 respond to police officers?

10 A. Yes, ma'am.

11 Q. And people need to know they have a right not to  
12 incriminate themselves if they don't want to?

13 A. Yes, ma'am.

14 Q. "Anything you say can be used against you in court or  
15 other proceedings." That's important, isn't it?

16 A. Yes, ma'am.

17 Q. Because sometimes people make statements, and then  
18 those statements get used against them in court?

19 A. Yes, ma'am.

20 Q. So people need to know they have a right to not make  
21 those statements; right?

22 A. Yes, ma'am.

23 Q. Number 4: "You have the right to consult an attorney  
24 before making any statements or answering any questions."

25 would you agree that means people have a right to talk to

1 an attorney?

2 A. Yes, ma'am.

3 Q. And the reason that it might be important to talk to  
4 an attorney is they're schooled in the law in the rules of  
5 law; correct?

6 A. Yes, ma'am.

7 Q. And they may be able to advise the client of whether  
8 it is in their best interests to talk to law enforcement?

9 A. Yes, ma'am.

10 Q. "If you cannot afford an attorney, one will be  
11 appointed for you before any questioning, if you wish."  
12 So would you agree that means, even if you're poor and you  
13 don't have money to go out and hire an attorney, our  
14 system thinks it's so important, we're going to appoint an  
15 attorney for you to consult with?

16 A. Yes, ma'am.

17 Q. "If you decide to answer questions now, you still  
18 have the right to stop the questioning at any time, or to  
19 stop the questioning for the purpose of consulting with an  
20 attorney." So, again, the Supreme Court is reiterating  
21 how important it is that you can start, and you might  
22 think it's a bad idea, and you can stop; right?

23 A. Yes, ma'am.

24 Q. Stop at any time. And, again, you can stop because  
25 you want to talk to an attorney?

1 A. Yes, ma'am.

2 Q. So from your training and education, you recognize  
3 how important those rights are; right?

4 A. Certainly.

5 Q. And you handed him a piece of paper; correct?

6 A. Yes, ma'am.

7 Q. And you kept talking? You kept talking to him? You  
8 handed him a piece of paper, and you kept talking to him;  
9 right?

10 A. Yes, ma'am.

11 Q. So you didn't let him sit there and silently read  
12 these seven important rights? You kept talking to him;  
13 correct?

14 A. I did keep talking to him.

15 Q. It struck me that this is unlike how you acted later  
16 in the video when you were showing him pictures and asking  
17 him to identify them. You would show him a picture, ask  
18 him to identify them, and you would ask him to tell you  
19 what it was, and then you would tell him what to write on  
20 the picture, and you would be silent while he was writing.  
21 It seemed like you acted very differently, did you not?

22 A. I don't know if I was acting very differently, ma'am,  
23 I'm sorry.

24 Q. Well, so that kind of leads me to my next question.  
25 In all of your training, is that a technique you were

1 trained in, to talk to somebody when you hand them the  
2 Miranda warning sheet?

3 A. Oh, no. We weren't specifically trained on how to  
4 advise Miranda. We were trained that we had to advise  
5 Miranda.

6 Q. But your goal is to get a suspect to talk to you, is  
7 it not?

8 A. My goal is to make sure that the suspect is aware of  
9 his rights, and if he wants to talk to me, to talk to me.

10 Q. But when you go in the room, aren't you hoping that  
11 the suspect is going to talk to you?

12 A. I hope that he would talk to me, yes.

13 Q. Okay. So you get trained in how to get suspects to  
14 talk to you; correct?

15 A. I'm trained on how to interview, yes, ma'am.

16 Q. I would assume you get a lot of training. Isn't that  
17 kind of like one of the hearts of your profession,  
18 interviewing?

19 A. It is, but, no, we don't have an exorbitant amount of  
20 it due to the curriculum and stuff that you have to get  
21 through. But it is a part of it. We do receive some  
22 training in interviewing.

23 Q. And different techniques; right?

24 A. I wouldn't say different techniques. Like, I've  
25 never been to a Reed School or anything like that.

1 Q. But that's an example of interviewing techniques;  
2 right?

3 A. Yeah.

4 Q. So there are different techniques?

5 A. Yes, ma'am.

6 Q. Okay. So you've been trained in how to interview or  
7 interrogate somebody; correct?

8 A. Yes.

9 Q. So my question is, then, that's not a particular  
10 technique that you were taught, that you hand the form  
11 with the rights and keep talking to him?

12 A. Oh, no, ma'am.

13 MS. HENDERSON: Objection, your Honor. Asked and  
14 answered.

15 THE COURT: Are you moving on?

16 MS. KATZE: Yes, I am.

17 THE COURT: Okay.

18 BY MS. KATZE:

19 Q. So when you handed him the paper, do you think it's  
20 fair to say that he literally didn't have time to try to  
21 read the seven Statements of Rights?

22 A. No, I don't think that's fair.

23 Q. So you think that -- I want to play the clip for you,  
24 just so you can have another chance to look at it. You  
25 think that he had plenty of time to read those seven

1 things that I just read to you?

2 A. Yes, ma'am.

3 MS. KATZE: Okay. Richard, could we just play  
4 the clip? And actually, I think, can you get it to two?  
5 Because there's a little period where he's sitting in  
6 there.

7 BY MS. KATZE:

8 Q. We'll just play -- I'm just going to play from when  
9 law enforcement gets in until the end of the clip. And if  
10 you could, because it's short, just pay attention to what  
11 everybody's doing. But I can play it again if I need to  
12 for you.

13 A. Okay, ma'am.

14 MS. KATZE: Go back to where they come in,  
15 please. Okay, that's fine. I know at first there's just  
16 a little bit of like biographical stuff.

17 (Video recording played)

18 BY MS. KATZE:

19 Q. So you had an opportunity to see a minute or so;  
20 right.

21 A. Yes, ma'am.

22 Q. And the entire time when you give him that piece of  
23 paper, either you or Detective Sabaugh are talking to him;  
24 is that fair to say?

25 A. Most of the time, yes.

1 Q. There's not like a moment of silence. You don't  
2 pause to let him read it; correct?

3 A. I didn't pause to let him read it silently, no,  
4 ma'am.

5 Q. And while I'll agree there are times when it appears  
6 that he drops his eyes to look at the paper, he certainly  
7 is making eye contact with you and Detective Sabaugh, as  
8 well; right?

9 A. Yes, ma'am.

10 Q. And so it's not -- so in that period of time -- so,  
11 now I've just paused it, because now apparently he's done  
12 reading, or you've decided it's time for him to sign the  
13 sheet because now you're getting ready to get him to go  
14 over to the table; right?

15 A. Yes, ma'am, we're moving to the table.

16 Q. So the first thing I wanted to point out, the first  
17 thing you said to him is, you referred to this Statement  
18 of Rights form as a waivers form.

19 A. Yes, sir.

20 Q. So not a Statement of Rights form, a waivers form;  
21 right?

22 A. Yes, ma'am.

23 Q. And then you told him that he needed to sign that  
24 he'd received them?

25 A. Yes, ma'am.

1 Q. But that's not what this is; right? What this says,  
2 it's not that he received the rights; correct?

3 A. No, ma'am.

4 Q. So those are two kind of incorrect things that you  
5 said to him; right? You told him, this is a waiver form,  
6 and then you said, you need to sign that you received it.  
7 And that's not correct?

8 A. No, he needed to initial that he received it.

9 Q. But you told him he needed to sign that he received  
10 that?

11 A. Yes, ma'am.

12 Q. And then you directed him over to the table; right?

13 A. Yes, ma'am.

14 Q. And you told him -- and we can go finish the video,  
15 but you told him to put his initials next to them to show  
16 that he had read them?

17 A. And understood them, yes.

18 Q. But you never asked him if he read those seven  
19 statements; right?

20 A. No, I asked him to put his initials next to the  
21 statement if he had read them and understood them.

22 Q. My question is, you never asked him if he read those  
23 seven statements? Do you want me to play it again?

24 A. No, no.

25 Q. Did you ever say, okay, so did you read these?

1 A. No, I asked him to initial if he read and understood  
2 them.

3 Q. Could you just answer my question, please?

4 A. Yes, ma'am. I didn't specifically say, did you read  
5 your rights.

6 Q. And then you said: "This says you're willing to talk  
7 to us, I just need you to sign and print your name."

8 A. Yes.

9 Q. But you never asked him if he was willing to talk to  
10 you; is that correct?

11 A. No.

12 MS. KATZE: Here, just play to the end of the --  
13 yeah. I just want to ask about one other thing.

14 (Video recording played)

15 BY MS. KATZE:

16 Q. Okay. "Now that that silliness is out of the way."  
17 That's what you said; right?

18 A. Yes, ma'am.

19 Q. And on Direct Exam, you referred to that as a poor  
20 turn of a phrase.

21 A. An unfortunate turn of phrase, yes.

22 Q. Let's see if your actions show that you think these  
23 Constitutional rights, these Miranda warnings, are silly.  
24 They weren't important enough for you to read them to him;  
25 correct?

1 A. No, I didn't read them to him, ma'am.

2 Q. They weren't important enough for you to ask him if  
3 he actually had read them; correct?

4 A. I didn't specifically say that, but I did ask him to  
5 initial next to them if you read them. Because if you go  
6 back to that clip, it says: "I need you to understand  
7 them." And then I asked him: "If you read these, put  
8 your initials next to them." So I didn't specifically ask  
9 him, had he read them, I assumed it on the initials,  
10 ma'am.

11 Q. So you didn't specifically ask him if he read them?

12 A. No, ma'am.

13 Q. And you didn't specifically ask him if he understood  
14 them; correct?

15 A. I didn't specifically ask him, no ma'am.

16 Q. And those Miranda Constitutional rights, that  
17 silliness, those Constitutional rights were not important  
18 enough for you to ask him if he wanted to speak to an  
19 attorney; correct?

20 A. No, ma'am, I didn't ask him if he wanted to speak to  
21 an attorney.

22 Q. And they weren't important enough for you to ask him  
23 if he wanted to waive those rights? You never said, now  
24 that we've gone over those rights, do you want to actually  
25 waive those rights?

1 A. No, ma'am, I didn't specifically ask him if he wanted  
2 to waive those rights.

3 MS. KATZE: Your Honor, may we have a minute,  
4 please?

5 THE COURT: Sure.

6 MS. KATZE: I have nothing further. Thank you.

7 THE COURT: Is there Redirect?

8 MS. HENDERSON: Only briefly, your Honor.

9 MS. KATZE: Your Honor, the witness was handed  
10 something. Can I just ask what it is?

11 MS. HENDERSON: I was just about to put that on  
12 the record. I just gave Special Agent Breen a copy of the  
13 transcript that I believe is Government's Exhibit 38.

14 MS. KATZE: I'm sorry, a transcript of?

15 MS. HENDERSON: Of the video.

16 MS. KATZE: Okay.

17 REDIRECT EXAMINATION

18 BY MS. HENDERSON:

19 Q. So, you were just asked several questions about the  
20 time period where you were going over the Miranda warnings  
21 with the Defendant, and I know that the Court has seen the  
22 video several times and we have discussed this during your  
23 Direct. However, I'd like to focus you quickly to Page --

24 THE COURT: What exhibit is this, just so I can  
25 follow you?

1 MS. HENDERSON: 38, your Honor.

2 THE COURT: Thank you. And what page on 38?

3 MS. HENDERSON: Page 5, your Honor.

4 THE COURT: Thank you.

5 BY MS. HENDERSON:

6 Q. Special Agent Breen, I'd like to direct your  
7 attention to Lines 21 through 23.

8 A. Yes, ma'am.

9 Q. Can you read those out loud, please?

10 A. "Special Agent Breen: So you understand these?  
11 would you mind just putting your initials right next to  
12 them to show that you have read those rights?"

13 Q. And are you referring to the seven rights that are at  
14 the top of the Statement of Rights form?

15 A. Yes, ma'am.

16 Q. So you did ask him if he understood them?

17 MS. KATZE: Objection. Leading.

18 A. Yes, ma'am.

19 THE COURT: Overruled.

20 BY MS. HENDERSON:

21 Q. And did you ask him if he would mind putting his  
22 initials next to them, if he had read those rights?

23 A. I did ask him to put his initials next to them  
24 showing that he read those rights.

25 Q. I know the video in areas is not the clearest. You

1 were in the room with him?

2 A. Yes, ma'am.

3 Q. And when you gave him the paper, what did you  
4 observe?

5 A. It appeared that he was looking down and reading the  
6 paper while we were talking to him.

7 Q. So did you have any reason to believe, when you asked  
8 him to sign his initials that he understood and read his  
9 rights, that he hadn't actually done so?

10 A. No, ma'am. As far as I knew, he understood his  
11 rights.

12 Q. I wanted to go back to the house and just follow up  
13 on a few questions to clarify a few things.

14 A. Yes, ma'am.

15 Q. When you're doing a knock and talk, on Cross you said  
16 that there is a required minimum of six officers.

17 A. Yes, ma'am.

18 Q. Why is that?

19 A. It's for officer safety. Our office states that we  
20 need to have people available to knock on the door, and  
21 then you would have security for those individuals if for  
22 some reason something untoward happened at the door, and  
23 then you have perimeter security to make sure that other  
24 people don't wander into the scene, or if someone is  
25 coming back that you've not accounted for, that they pose

1 a threat to the agents that are on scene.

2 Q. You also talked about that there's at least seven  
3 officers or agents when you conducted the knock and talk.

4 A. Yes, ma'am.

5 Q. And then there was questions about whether or not  
6 other officers were coming to the house. Did any other  
7 officers or agents show up to the house later that day?

8 A. I believe that throughout the day, different agents  
9 showed up to assist in securing the house, to help with  
10 the children, and then during the execution of the search  
11 warrant.

12 Q. What happened after you -- or what is your  
13 understanding of what happened after you left the house  
14 with the Defendant?

15 A. After we left the house with the Defendant, the  
16 agents that were on scene waited for CYFD to show up to  
17 take the children from our Victim Witness Coordinator.  
18 After the children were gone, I believe Franque Hatten and  
19 Keifer Orfield were dressed and I believe they left at  
20 that time and came down to the station in, I guess it was  
21 the Mitchells' car. And then all the agents, as they were  
22 leaving, all the agents left and secured the scene to wait  
23 for the warrants to be written.

24 Q. Did you speak to any of the other officers,  
25 specifically APD Storey and -- I'm sorry, the other

1 officer, the other APD Detective --

2 A. Hawkes.

3 Q. -- in preparation for this hearing?

4 A. Yes, ma'am.

5 Q. Did you ask them about whether or not they searched  
6 the house?

7 A. Yes, ma'am. We asked if they had started searching  
8 prior to the execution of the search warrant.

9 MS. KATZE: Objection, your Honor. Outside the  
10 scope of cross.

11 MS. HENDERSON: Your Honor, she specifically  
12 asked questions about whether or not he knew what they did  
13 upstairs on Cross.

14 THE COURT: Overruled.

15 A. Yes, we specifically spoke prior on July 28th.

16 BY MS. HENDERSON:

17 Q. And what did they say?

18 A. We asked if they had begun searching the house prior  
19 to the issuance of the search warrants, and they stated,  
20 no.

21 Q. What time was the search warrant issued to you that  
22 day?

23 A. 9:00. 9:00 P.M.

24 Q. And what time did the Federal search warrant begin?

25 A. 9:00 P.M. We called to let them know that the judge

1 had signed the search warrant.

2 Q. You were also asked why none of your reports stated  
3 anything about receiving consent from Mr. Blackburn. What  
4 was your understanding when you wrote your reports and  
5 your Complaint about receiving consent?

6 A. Because we referred to it as a knock and talk, that  
7 had consent not been granted, we wouldn't have been  
8 allowed to enter the house. It's part and parcel with the  
9 term. You have no authority to enter unless granted  
10 consent by the people there.

11 Q. Did your report in the Complaint refer to a knock and  
12 talk throughout?

13 A. Yes, ma'am.

14 Q. You also were asked a question about whether or not  
15 everybody was free to leave. Throughout the entire time  
16 that officers were at the Mitchells' apartment, were  
17 Mr. Orfield and Ms. Hatten free to leave?

18 A. Yes, ma'am.

19 Q. During the entire time period -- well, let me ask  
20 this: when you first arrived at the house, was  
21 Mr. Blackburn free to leave?

22 A. Yes, ma'am.

23 Q. At what point did you believe that you had reasonable  
24 suspicion to detain the Defendant at the house?

25 A. After we were contacted by Ms. Hatten outside and she

1 told us that she believed that he was assaulting the kids.

2 Q. So at that point, if he had asked to leave, would you  
3 have let him leave?

4 A. No, ma'am.

5 Q. What time did you believe that you had probable cause  
6 to arrest the Defendant at the house?

7 A. 8:30. When I saw -- I'm sorry; when I saw the  
8 pictures on his phone.

9 Q. While you were at the house, did you ever ask the  
10 Defendant anything that would implicate him?

11 A. No, ma'am.

12 Q. We talked about that you went to the front of the  
13 house after you saw the images. What was that discussion?

14 A. That was when I spoke with Detective Sabaugh, that  
15 the images were found on Mr. Blackburn's phone, and it  
16 would be better for him to not be spoken to with the other  
17 adults in the house, and that we were going to ask him to  
18 come down to the station and talk to us.

19 Q. At that time, did you ask him any follow-up questions  
20 about the images themselves?

21 A. No, ma'am.

22 Q. Are you aware of whether or not Agent Langer asked  
23 him any specific questions about the images?

24 A. No, ma'am, I'm not.

25 MS. HENDERSON: No further questions, your Honor.

1 THE COURT: I've got a few. Let me ask my  
2 questions, and I'll let counsel follow-up.

3 You were asked earlier -- I mean, you're the Case  
4 Agent in this Federal prosecution?

5 THE WITNESS: Yes, sir.

6 THE COURT: Now, this was a dual, I take it, with  
7 the Bernalillo County Sheriff's Office, or Detective, as  
8 well as -- was there a detective from the Albuquerque  
9 Police Department present?

10 THE WITNESS: There was, sir. It's a joint task  
11 force that we were working on at that time called SPEED,  
12 which is Sexual Predator Exploitation Enforcement Detail,  
13 which was APD, Bernalillo County Sheriff's Office, and  
14 HSI.

15 THE COURT: But the Federal jurisdiction, or at  
16 least as you were approaching this, that if there is child  
17 pornography, then that would be Federal jurisdiction?

18 THE WITNESS: Yes, sir.

19 THE COURT: If there was some form of criminal  
20 sexual contact, would that, to your understanding, would  
21 that have preceded in State court?

22 THE WITNESS: Yes, sir. That's a State charge.  
23 we don't hold that charge.

24 THE COURT: And so if the State authorities were  
25 going to proceed on some form of State charge relating to

1 a criminal sexual contact offense, would you have been the  
2 Case Agent?

3 THE WITNESS: No, sir. Detective Sabaugh is the  
4 lead Case Agent on that part of the crime.

5 THE COURT: Okay. Do you know if State charges  
6 were filed in this case?

7 THE WITNESS: Yes, they were, your Honor.

8 THE COURT: Okay. So there are pending State  
9 charges right now?

10 THE WITNESS: Yes, sir.

11 THE COURT: Now, some of this was asked  
12 yesterday, and I'm going to just ask it for my benefit so  
13 I don't have to read the transcript again. But, let me go  
14 over this.

15 In terms of your training and experience at the  
16 time -- I know you have a different job title now, but  
17 what was your job title during the time period that  
18 encompassed this investigation in this case?

19 THE WITNESS: I was a Special Agent with Homeland  
20 Security Investigations assigned to the Public Safety  
21 unit, which was specifically for child exploitation.

22 THE COURT: Now, as part of your training, did  
23 you have to undergo some form of computer training,  
24 information technology?

25 THE WITNESS: Yes, sir. I took --

1 THE COURT: If you would, kind of summarize that  
2 for me.

3 THE WITNESS: As part of my initial training to  
4 work on that unit, I went to multiple classes with  
5 New Mexico State Police to utilize what's called the Child  
6 Protective Service Program, which allows me to research  
7 peer-to-peer networks.

8 I also had basic informational investigative  
9 techniques through search.org, which is a national  
10 not-for-profit training house that goes around and gives  
11 classes on different investigative techniques for child  
12 exploitation or fraud, or any type of investigation. And  
13 then I've had, like, basic analysis training on computers  
14 to link files back and forth.

15 THE COURT: When you use the term peer-to-peer  
16 network, what do you mean by that?

17 THE WITNESS: A peer-to-peer network is a network  
18 in which people trade through their own computers. If you  
19 remember the service Napster which allowed people to trade  
20 songs back and forth, or Limewire, it's similar to that,  
21 but they utilize it to trade child pornography.

22 THE COURT: Is there a particular -- when you use  
23 the term peer-to-peer network, is there a particular name?  
24 Like Napster was for music. Is there a particular name  
25 for child pornography?

1           THE WITNESS: It's called a Gnutella network or  
2 an Ares network, but there's a bunch of them, sir.  
3 There's Bit Torrent. There's all of these open format  
4 networks. Anywhere that you can trade like a hijacked  
5 movie, a Hollywood release, you can also trade child  
6 pornography on it.

7           THE COURT: Now, this question was asked  
8 yesterday, and I think you confirmed it, but for my  
9 benefit, a thumb drive is the same thing as a flash drive?

10          THE WITNESS: A thumb drive is the same thing as  
11 a flash drive, yes, sir.

12          THE COURT: Now, you used the term -- it was  
13 either a SIM card or an SD card. What term did you use?

14          THE WITNESS: An SD card. An SD card is actually  
15 a scanned disc, which is why it's referred to as an SD  
16 card. It's like calling something Kleenex. It's a solid  
17 state drive that's used for storing data. They have  
18 regular SD cards, and then mini SD cards that you can find  
19 in a lot of phones. But it's a solid state drive used for  
20 storing data.

21          THE COURT: Now, am I correct that your  
22 investigation determined that the Defendant's cellphone  
23 was an iPhone 4?

24          THE WITNESS: His original cellphone that he sold  
25 at the kiosk was an iPhone 4, yes.

1 THE COURT: What type of phone was at the  
2 apartment?

3 THE WITNESS: A Kyocera Rise.

4 THE COURT: Okay. So it was not an iPhone?

5 THE WITNESS: No, sir. He had sold the iPhone  
6 and gotten a new phone.

7 THE COURT: What did your investigation determine  
8 in terms of the pictures in here, Exhibits 39, 40, 41, 42,  
9 43, 44, 45, 46, 47, 48, 49, and these are the photographs,  
10 some of which where the genital area has been covered up,  
11 what did your investigation determine was the device used  
12 to take those photographs?

13 MS. HENDERSON: Your Honor, if I may, so he could  
14 view the exhibits.

15 THE COURT: Sure. Basically, the photographs of  
16 the children.

17 THE WITNESS: It was starting from 36, your  
18 Honor?

19 THE COURT: Actually, well, let me be a little  
20 more specific.

21 THE WITNESS: I apologize, your Honor.

22 THE COURT: No, I should have had you look at --  
23 I was trying to be too general, I think.

24 THE WITNESS: I have them now, your Honor.

25 THE COURT: What is 36? Can you just show that

1 to me?

2 THE WITNESS: 36 is the end of -- I'm sorry. I  
3 only have 39 starting in this one.

4 THE COURT: All right, 39.

5 THE WITNESS: 36 is the e-mails, sir.

6 THE COURT: All right, so let's go with 39.

7 THE WITNESS: Yes, sir.

8 THE COURT: What did your investigation show --  
9 well, maybe this is the way to ask it. From 39 all the  
10 way to 49, was the same device used to take the  
11 photographs?

12 THE WITNESS: No, sir.

13 THE COURT: Okay. Which device --

14 THE WITNESS: 48 and 49 were created on an  
15 iPhone 4. Those are the original images that were  
16 received in the tips that showed the EXIF data, putting it  
17 at Aspen Apartments.

18 THE COURT: All right. Now, before we go to the  
19 other, for 48 and 49, if they were taken with an iPhone,  
20 am I correct in my understanding that an iPhone or an  
21 Apple product like that, if you're going to transmit the  
22 photograph, it has to be done through some form of  
23 wireless communication or wireless technique?

24 THE WITNESS: No, your Honor. He could have just  
25 plugged it into another computer and used it like any

1 other camera.

2 THE COURT: So you can take the phone, the  
3 iPhone, to get the photos off the iPhone, and plug it  
4 into some form of computer and transmit the photographs  
5 that way?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. Now, the other photographs,  
8 were they taken with the other phone?

9 THE WITNESS: The photographs of Maria's nephews  
10 and nieces were originally on the SD card. They weren't  
11 taken with the Kyocera Rise. The two traded pictures,  
12 which would be 41 and 42, were sent to Mr. Blackburn.  
13 Those were not taken with that phone. The other pictures,  
14 43 through 47, were taken with the Kyocera Rise.

15 THE COURT: And when the search warrant was  
16 executed, was there either a desktop or a laptop computer  
17 that Mr. Blackburn had?

18 THE WITNESS: There was a laptop, an IBM laptop  
19 computer, sir. But it was broken.

20 THE COURT: Did your investigation determine,  
21 then, in order to get photographs into the peer-to-peer  
22 network, how that was done?

23 THE WITNESS: He didn't send them into the  
24 peer-to-peer network. He directly e-mailed them to people  
25 that he had met through the Image Source. And that was

1 all accomplished through his phone through a wi-fi  
2 connection that allowed him to connect to the internet.

3 THE COURT: All right. That's what I wanted to  
4 know. I guess that was a long-winded way of getting  
5 there.

6 THE WITNESS: I'm sorry.

7 THE COURT: No, I didn't do a very artful job of  
8 asking the question. And the search warrants that were  
9 issued, were they Federal search warrants, or State?

10 THE WITNESS: The search warrants for the  
11 residence, the two e-mails, and the cellphone were all  
12 Federal search warrants.

13 THE COURT: Okay. So the State officers did not  
14 go to State court to get a search warrant?

15 THE WITNESS: The State officers issued a State  
16 search warrant for material relating to the criminal  
17 sexual penetration.

18 THE COURT: So that was not encompassed in the  
19 Federal search warrant?

20 THE WITNESS: No, sir.

21 THE COURT: Okay. Ms. Katze, do you have any  
22 questions in light of mine?

23 MS. KATZE: I just have one question.

24 RECROSS-EXAMINATION

25 BY MS. KATZE:

1 Q. You indicated that charges were brought in State  
2 court?

3 A. I don't know if they've been brought. I believe  
4 Theresa has filed them with the D.A. and is waiting for a  
5 return. But I'm not sure if they've been -- I know that  
6 the detective has forwarded the complaints.

7 Q. But as far as you know, it's not in court?

8 A. Oh, no, ma'am. I'm sorry.

9 MS. KATZE: Thank you. That was it.

10 THE COURT: And Ms. Henderson, do you have any  
11 questions in light of mine?

12 MS. HENDERSON: Your Honor, just a couple to  
13 clarify.

14 THE COURT: Okay.

15 REDIRECT EXAMINATION

16 BY MS. HENDERSON:

17 Q. You mentioned that the State received a search  
18 warrant for the house?

19 A. Yes, ma'am. The State issued a search warrant for  
20 the house, as well.

21 Q. And at what time did the State execute their search  
22 warrant for the house?

23 A. I believe it was approximately 7:00 P.M., but I'm not  
24 100% sure on that.

25 Q. On December 17th?

1 A. On December 17th, yes, ma'am.

2 Q. In response to the Judge's question about several of  
3 the images, I believe with the exception of the last two,  
4 you mentioned that the first two, I believe 39 and 40,  
5 were on the SD card, but you took that off the phone;  
6 correct?

7 A. Yes, ma'am. These were all -- all images from 39 to  
8 47 were printed from Mr. Blackburn's phone.

9 Q. Off the SD card in the phone?

10 A. Yes, from connecting the phone directly to a  
11 stand-alone computer.

12 Q. And so when you told the Judge that you believed that  
13 the images of Maria's family were previously on the  
14 SD card, that's based off your understanding from the  
15 interview of the Defendant?

16 A. Yes, ma'am.

17 MS. HENDERSON: Thank you.

18 THE COURT: All right, thank you. You may step  
19 down.

20 THE WITNESS: Thank you.

21 THE COURT: The Government may call its next  
22 witness.

23 MS. LIZARRAGA: The United States calls special  
24 Agent Christina Altamirano.

25 MR. GARCIA: Please raise your right hand, ma'am.

1 (CHRISTINA ALTAMIRANO, GOVERNMENT'S WITNESS, SWORN)

2 MR. GARCIA: Please have a seat and state your  
3 full name for the record.

4 THE WITNESS: My name is Christina Altamirano.

5 DIRECT EXAMINATION

6 BY MS. LIZARRAGA:

7 Q. Could you please spell that for the record.

8 A. First name is C-h-r-i-s-t-i-n-a. Last name,

9 A-l-t-a-m-i-r-a-n-o.

10 Q. Good morning.

11 A. Good morning.

12 Q. Where do you work?

13 A. I work for Homeland Security Investigations.

14 Q. What is your title there?

15 A. Special Agent.

16 Q. And what division are you currently assigned to?

17 A. Child Exploitation.

18 Q. How long have you been working in the Child

19 Exploitation Division?

20 A. Approximately three years.

21 Q. And what were you doing before you were assigned to  
22 the Child Exploitation Unit?

23 A. Before, I was in El Paso working narcotics.

24 Q. And what agency were you working with?

25 A. Homeland Security Investigations.

1 Q. So how long have you been with Homeland Security  
2 Investigations?

3 A. Approximately six years.

4 Q. And what were you doing before that?

5 A. Army.

6 Q. Can you give me more specifics?

7 A. Yes. I was mobilized for about five years doing  
8 joint operations.

9 Q. What does it mean to be mobilized?

10 A. It's a reservist called to active duty in support of  
11 any contingency operations.

12 Q. I want to talk to you a little bit about your  
13 training and experience as it pertains to child  
14 exploitation. Can you go through some of the training and  
15 experience that you've received?

16 A. Once I got to Albuquerque, I received some chat  
17 training, which included the basis of predators out there  
18 who lure children in order to meet up for sex. Also, it's  
19 called the Crimes Against Children Conferences, I  
20 attended, and then as well as just some training at HSI.

21 Q. The Crimes Against Children Conference that you  
22 attended, do you recall some of the classes that you went  
23 to?

24 A. Yes. It was towards children being sexually  
25 exploited, the types of grooming that predators will do in

1 order to exploit children.

2 Q. And so you were in -- were you in the Child  
3 Exploitation Division back in December of 2013?

4 A. Yes, I was.

5 Q. And did you become involved in the investigation into  
6 Michael Blackburn?

7 A. Yes, I did.

8 Q. Do you see Michael Blackburn here in the courtroom  
9 today?

10 A. Yes, I do.

11 Q. Can you please identify a piece of clothing that he's  
12 wearing and where he's sitting?

13 A. He is sitting with the defense, wearing a neon shirt.

14 MS. LIZARRAGA: Your Honor, may the record  
15 reflect that the witness has correctly identified the  
16 Defendant.

17 THE COURT: The record will so reflect.

18 BY MS. LIZARRAGA:

19 Q. All right, so I want to talk to you about how you  
20 became involved in this investigation. Can you tell me  
21 how it began?

22 A. It began with a tip from C-3, which is our Cyber in  
23 D.C. unit, and it was sent to Albuquerque, and Breen was  
24 assigned to that case. And I started getting involved  
25 when we were looking at the EXIF data and trying to figure

1 out exactly where the location was. Did a couple of  
2 drive-bys and some surveillance.

3 Q. So when you're talking about the EXIF data, what do  
4 you mean by that, and what had EXIF data that you were  
5 looking into?

6 A. So photos, whenever you take it, it shows kind of  
7 like a fingerprint showing where the photo was taken, what  
8 device took it, the time it was taken, and then the  
9 location. It shows like a geo location.

10 Q. So what kind of photograph were you investigating?

11 A. It was a child exploitation photograph.

12 Q. And what did you learn about that photograph?

13 A. We learned that the geo location was in the west side  
14 of Albuquerque off of Eagle Ranch Road at an apartment  
15 complex.

16 Q. I'm showing you what's been previously admitted as  
17 Government's Exhibit 48. Do you recognize that?

18 A. Yes, I do.

19 Q. What is that?

20 A. That's the first photo that was sent from C-3 that  
21 had the EXIF data pinging to the west side.

22 Q. At some point, did you receive a tip regarding  
23 another photograph?

24 A. Yes. It was a follow-on tip from C-3 with another  
25 photograph, same location.

1 Q. I'm showing you what's been admitted as Government's  
2 Exhibit 49. Do you recognize that photo?

3 A. Yes, I do.

4 Q. And what is it?

5 A. That's the second photo sent from C-3 that was taken  
6 at the same location.

7 Q. And what was significant about Government's  
8 Exhibit 49 for the investigation?

9 A. That one showed a body part of a male, pretty much  
10 inserting his penis into the child.

11 Q. Well, I don't -- I believe that, and I know that  
12 these are redacted, but I believe Government's Exhibit 48  
13 has that; is that right?

14 A. Yes.

15 Q. And I can bring them to you to look under the  
16 redactions, if you need. But with regard to being able to  
17 identify -- I guess, let me just ask you this:  
18 Government's Exhibit 48, do you have a face in that photo?

19 A. No, I don't.

20 Q. So Government's Exhibit 49, what was significant  
21 about that photo?

22 A. The child's face.

23 Q. Okay. So after you received this photograph, what  
24 did you guys do?

25 A. We sanitized it a little more than what it's showing

1 right now, just showing the child's face, and that's what  
2 we used to show neighbors and persons of the apartment  
3 complex to help us identify the child.

4 Q. All right. And at some point, did you receive  
5 information that that child could potentially be residing  
6 at 5601 Wyoming Street?

7 A. Yes.

8 Q. All right. So I want to direct your attention to  
9 December 17, 2013. Were you on duty that day?

10 A. Yes, I was.

11 Q. And what happened on December 17, 2013?

12 A. We met up and did a small brief, and we were going to  
13 conduct a knock and talk in support of a Bernalillo County  
14 Sheriff's operation.

15 Q. I'm showing you Government's Exhibit 1. Do you  
16 recognize that?

17 A. Yes, I do.

18 Q. What is that?

19 A. That's the front of the apartment that we conducted  
20 the knock and talk at.

21 Q. All right. So I want you to take me through what you  
22 remember that morning getting to the house. Do you  
23 remember what time you got there?

24 A. Not exactly, but around 7:00.

25 Q. Okay. Do you remember if the sun had come up?

1 A. Yes.

2 Q. All right. So what happens -- what was your role in  
3 this knock and talk? What were you there to do?

4 A. I was a support person. I wasn't the lead on it. I  
5 was pretty much set aside, and once we were going to make  
6 entry into the house, I helped out where I could.

7 Q. So what were you able to observe that morning when --  
8 or who went up to the door?

9 A. Detective Sabaugh and Special Agent Breen went up to  
10 the door, conducted the knock and talk. The door was  
11 answered, and Detective Sabaugh stated the reason why we  
12 were there.

13 Q. Could you hear and see this going on?

14 A. Yes.

15 Q. I'm showing you Government's Exhibit 1. Where were  
16 you?

17 A. I was to the left, the sidewalk area, near the second  
18 bush. First or second bush.

19 Q. So for purposes of the record, I'm pointing to the  
20 second bush on the left side of the page. Is that about  
21 where you were?

22 A. A little further in. No, the other way. Like, right  
23 there.

24 Q. Right here, all right. So what happened after  
25 Special Agent Breen and Detective Sabaugh knocked on the

1 door?

2 A. The door was answered by Michael Blackburn, and  
3 Detective Sabaugh told him, we're here to conduct a child  
4 welfare check.

5 Q. And what happened after that?

6 A. He said, okay. And then she asked if we could come  
7 in and conduct the check, and he agreed. And then he was  
8 asked if anybody else was in the house, and that we were  
9 just going to do a safety sweep, just to make sure for  
10 safety reasons.

11 Q. And is that standard practice?

12 A. It is.

13 Q. What's the purpose of a safety sweep?

14 A. Well, for everyone's protection. Our protection,  
15 anyone else in the home's protection. Making sure that no  
16 one readily has a weapon available to them.

17 Q. All right. I'm showing you Government's Exhibit 3.  
18 What are we looking at here?

19 A. This is the entryway to the apartment.

20 Q. Okay. So at the point that you go inside, do you  
21 remember who was inside the house at that point?

22 A. Yes. Once we made entry into the house, Blackburn  
23 was kind of to the side. One of the children was coming  
24 down the stairs, and as we walked down that hallway, in  
25 the living room two people were there, and that's who

1 Blackburn told us was going to be there.

2 Q. So Blackburn informed you about who was in the house?

3 A. He said, yes, two other people were sleeping in the  
4 living room.

5 Q. Okay. I'm showing you Government's Exhibit 11. Do  
6 you recognize that?

7 A. Yes.

8 Q. What is that?

9 A. That's the living room.

10 Q. Did you stay at the front of the house, or what did  
11 you do once you got inside?

12 A. Once I got inside, I flowed towards the living room  
13 area.

14 Q. And who was in there?

15 A. Franque Hatten and Keifer Orfield.

16 Q. And did you make contact with them?

17 A. Yes, we did.

18 Q. What did you tell them?

19 A. We told them who we were and what we were doing  
20 there, just conducting a welfare check.

21 Q. At that point, or I guess at any point, did anyone  
22 ever ask to leave the house?

23 A. No.

24 Q. Did you ever hear anyone ask you to leave the house?

25 A. No.

1 Q. All right. So what happens after you make contact  
2 with Ms. Hatten and Mr. Orfield?

3 A. At that point, we allowed them to get dressed and  
4 asked them if we could get them additional clothing. We  
5 allowed them to put additional clothing on, because they  
6 were asleep when we came in.

7 Once that occurred, Blackburn moved towards the  
8 living room, as well, and all three personnel were in  
9 there. Special Agent Langer began talking to Blackburn at  
10 that point.

11 Q. And do you remember what he was talking to him about?

12 A. SA Langer had asked him if he had a cellphone, an  
13 iPhone in particular, and Blackburn had told him that he  
14 had sold his iPhone at a kiosk.

15 Q. We're still looking at Government's Exhibit 11, so  
16 who all is in this room?

17 A. So in this room is Hatten, Orfield and Blackburn.

18 Q. And what law enforcement?

19 A. It's myself, Special Agent Langer and Special Agent  
20 Bonza.

21 Q. Okay. So what happened after -- you stated that you  
22 were in there with the individuals. What happened after  
23 that?

24 A. Once Blackburn started speaking to Special Agent  
25 Langer, Hatten came up to me and asked if she could talk

1 to me outside.

2 Q. And what did you tell her?

3 A. I said, sure, give me one second, and I let Special  
4 Agent Langer know that we were going to step outside.

5 Q. And did you step outside?

6 A. Yes, we did.

7 Q. Where did you go?

8 A. We went back to the front of the residence.

9 Q. And what happened once you got outside?

10 A. She asked me if we were there because her mom called  
11 us.

12 Q. Did you know what she was talking about?

13 A. No, I did not. And I asked her to elaborate on that.

14 Q. What did she tell you?

15 A. She told me that a couple of days prior to the  
16 17th, she had called her mom because she felt that  
17 Blackburn was sexually abusing the children. I asked her  
18 why she thought that, and she said that the kids were  
19 hypersexual, and that on Saturday, once the children's  
20 parents left, Blackburn had went upstairs with the  
21 children. They had just woken up, but he said they were  
22 going down for a nap. She had received a call from  
23 Ms. Mitchell, the children's mother, who said that she  
24 wanted to speak to Blackburn, so she went upstairs and  
25 tried to open the door, and it was locked. She heard one

1 of the kids saying, no, and then Blackburn came to the  
2 door.

3 Q. And so at this point, did you have any suspicion  
4 about who the offender might be?

5 A. At that point, I thought it was Blackburn.

6 Q. And you testified you had seen the pictures prior to  
7 going to the house that day?

8 A. Yes.

9 Q. All right. And so, were you aware -- when you got to  
10 the house, were you aware of whether or not there were any  
11 children in the house?

12 A. No. Just the information that we received that the  
13 Mitchells had moved to that area.

14 Q. Once you got inside the house?

15 A. Once he opened the door, I saw one of the victims.

16 Q. Okay. So after Ms. Hatten told you this, what did  
17 you then do?

18 A. I called SA Breen with me and had her tell her part  
19 of the story, as well, and then he left to take a phone  
20 call. And then she said, also, he's lying to you guys, he  
21 does have a cellphone.

22 Q. And so what does that -- what is she making reference  
23 to?

24 A. well, inside the house, he was telling SA Langer that  
25 he didn't have a cellphone. So she told me that he did

1 have a cellphone, and I asked her, you've seen him with  
2 it? And she said, yeah, it's upstairs, I'll show you. So  
3 I followed her.

4 Q. And where did she go?

5 A. She went upstairs, she hung a left into the kids'  
6 bedroom, and she grabbed a cellphone.

7 Q. Okay. I'm showing you Government's Exhibit 15. What  
8 are we looking at in this picture?

9 A. That's a linen closet to the right. As soon as you  
10 come up the stairway, that's the closet you see. To the  
11 left is another bedroom.

12 Q. And Government's Exhibit 16, what are we looking at  
13 here?

14 A. So, to the left is the stairwell. To the right, the  
15 door opened all the way to the right is a closet. And in  
16 the middle is the kids' bedroom.

17 Q. And is this where you followed Ms. Hatten?

18 A. Yes, I did.

19 Q. Where did she take you?

20 A. She took me into that middle bedroom.

21 Q. I'm showing you Government's Exhibit 19. Do you  
22 recognize this?

23 A. Yes.

24 Q. What is that?

25 A. That's the children's bedroom.

1 Q. I'm showing you Government's Exhibit 20. What are we  
2 looking at here?

3 A. Another angle of the children's bedroom.

4 Q. Government's Exhibit 21?

5 A. Another image of the children's bedroom.

6 Q. And Government's Exhibit 22?

7 A. Another image of the children's bedroom.

8 Q. All right. So you followed Ms. Hatten upstairs?

9 A. Yes.

10 Q. And what happened when you got upstairs?

11 A. Once we got upstairs, she went into that bedroom and  
12 grabbed a cellphone.

13 Q. Do you remember where specifically in the room it  
14 was?

15 A. No, I don't.

16 Q. And so just to be clear, she's the one that went and  
17 got the phone?

18 A. Yes.

19 Q. And what did she do with the phone?

20 A. Once she got it, she just turned around and gave it  
21 to me.

22 Q. And what did you do with the phone?

23 A. I asked her if this is Blackburn's phone, and she  
24 said, yes. I said, okay, let's go back downstairs.

25 Q. And did you guys go back downstairs?

1 A. Yes, we did.

2 Q. What did you do with the phone?

3 A. Once we got back downstairs, I went to Special Agent  
4 Langer and handed him the phone, and told him that it was  
5 Blackburn's phone.

6 Q. At any point in time from when Ms. Hatten gave you  
7 the phone to when you gave it to Special Agent Langer, did  
8 you ever open the phone?

9 A. No.

10 Q. Did you ever look through the phone?

11 A. No.

12 Q. What happened after you gave the phone to Special  
13 Agent Langer?

14 A. He asked Blackburn if it was his phone, and Blackburn  
15 stated, yes.

16 Q. And what happened after that?

17 A. Morjn asked if we could search the phone, and he  
18 said, yes, and then Morjn said, well, you know, we'll need  
19 you to sign a Consent to Search form, first.

20 Q. Did Special Agent Morjn give the Defendant a consent  
21 to search form?

22 A. Yes, he did.

23 Q. Did he explain it to the Defendant?

24 A. Yes, he did.

25 Q. And you witnessed all of this?

1 A. Yes, I did.

2 Q. Have you, in your training and experience, have you  
3 ever dealt with individuals with learning disabilities?

4 A. Yes, I have.

5 Q. Based on your observations of the Defendant at that  
6 time, did it appear that he had any learning disabilities?

7 A. No, it did not.

8 Q. Was he able to communicate with you?

9 A. Yes, he was.

10 Q. Did he appear to have trouble understanding anything  
11 that was going on?

12 A. No, he didn't.

13 Q. How would you describe the Defendant's demeanor  
14 during his interactions with you, in general?

15 A. He was calm during this time, and he was cooperating.

16 Q. What happened -- so, you testified that Special Agent  
17 Langer gave him a Consent to Search form; is that correct?

18 A. Correct.

19 Q. Did the Defendant sign it?

20 A. Yes, he did.

21 Q. And what happened after that?

22 A. Once he signed it, then Special Agent Langer began  
23 looking through his phone.

24 Q. And what happened after that?

25 A. Special Agent Langer saw images of child exploitation

1 on there.

2 Q. And what did he do?

3 A. He looked at Blackburn, and then he went into the  
4 hallway and contacted Special Agent Breen.

5 Q. And what happened after that?

6 A. Well, I stayed in there, in the living room with  
7 Blackburn, Orfield and Hatten, and then shortly after,  
8 they escorted Blackburn into the hallway.

9 Q. And did you stay in the living room?

10 A. Yes, I did.

11 Q. What happened after they escorted Blackburn out of  
12 the living room?

13 A. I stayed in there for a little bit, you know, still  
14 with Hatten and Orfield, and then moments later Special  
15 Agent Langer came in and told me that we needed to have  
16 everyone exit the house, because we needed to preserve  
17 everything else that was in there.

18 Q. I want to go back really quickly to when you went  
19 upstairs with Ms. Hatten. Did you observe any other law  
20 enforcement officials upstairs?

21 A. Yes, I did.

22 Q. Who did you see upstairs?

23 A. Detective Sabaugh was up there, the Victim  
24 Coordinator Assistance person that we have with HSI was up  
25 there, and they were both playing with the kids, trying to

1 get them dressed.

2 Q. Did you see anyone else up there?

3 A. Not that I recall.

4 Q. Okay. And so, now fast-forwarding back to Special  
5 Agent Langer coming and telling you -- and I'm sorry, what  
6 did he tell you after Blackburn had been removed from the  
7 living room?

8 A. He said that everyone needed to leave so that the  
9 house could be preserved, or the apartment could be  
10 preserved.

11 Q. And when you say preserved, what do you mean?

12 A. Well, we had to secure it and lock it so that we  
13 could wait for the search warrant.

14 Q. At any point in time up to then, did you search the  
15 house at all?

16 A. No.

17 Q. Did you observe anyone else from your agency or the  
18 Bernalillo County Sheriff's Office or the Albuquerque  
19 Police Department conducting a search?

20 A. No.

21 Q. So after Special Agent Langer decides to secure the  
22 scene, what did you then do?

23 A. I left the apartment. I left the apartment and just  
24 went to my vehicle.

25 Q. And were you able to observe other people leaving the

1 apartment?

2 A. Yes. Everyone left, and once everyone was gone, they  
3 shut the residence.

4 Q. Okay. And do you remember about what time that was  
5 at?

6 A. No, I don't.

7 Q. Can you give me an estimation of, you know, maybe how  
8 many hours you had already been there?

9 MS. KATZE: Objection. Asked and answered.

10 THE COURT: I don't recall, so I'll allow the  
11 question. Overruled.

12 A. We had probably been there for at least an hour, so  
13 between 8:00 and 8:30.

14 BY MS. LIZARRAGA:

15 Q. Okay. And so when you left the residence, did you  
16 stay there?

17 A. Yes. I stayed in my vehicle watching the residence.

18 Q. Why?

19 A. Because it had to be secured. We had to make sure  
20 that nobody else entered the residence or left the  
21 residence after we had closed it.

22 Q. And what were you waiting for?

23 A. Search warrants.

24 Q. How long were you at the residence on December 17th  
25 waiting?

1 A. We were there probably until about 2100, a little  
2 after, waiting for the search warrants to be signed.

3 Q. And what time is 2100? You'll have to forgive me.

4 A. 9:00 P.M.

5 Q. 9:00 P.M., okay. So, were you there the entire time?

6 A. The entire time.

7 Q. You never left?

8 A. I did leave to use the restroom, but then came right  
9 back.

10 Q. During that whole timeframe, did you ever observe  
11 anyone go into the residence before you got the search  
12 warrant?

13 A. No.

14 Q. Let me ask you this: Did the State and locals also  
15 get a search warrant?

16 A. Yes, they did.

17 Q. And who executed their search warrant first?

18 A. The State did.

19 Q. And do you remember about what time that happened?

20 A. No, I don't.

21 Q. But it was before you executed yours?

22 A. It was before ours, yes, it was.

23 Q. And so before the execution of the search warrant,  
24 did you ever observe anyone go into that house?

25 A. No.

1 MS. LIZARRAGA: Your Honor, may I have a moment?

2 THE COURT: Sure.

3 MS. LIZARRAGA: Your Honor, I pass the witness.

4 THE COURT: Let's do this. Let's take a short  
5 break.

6 (A recess was held from 9:52 until 10:17 A.M.)

7 THE COURT: All right, you may cross-examine,  
8 Ms. Katze.

9 MS. KATZE: Thank you.

10 CROSS-EXAMINATION

11 BY MS. KATZE:

12 Q. I wanted to talk to you about when you were in the  
13 living room, and you said Franque Hatten asked you to go  
14 outside and talk to her.

15 A. Yes, ma'am.

16 Q. So you went outside the front of the house?

17 A. Yes, ma'am.

18 Q. And the two of you talked?

19 A. Yes, ma'am.

20 Q. And she told you that she had some concerns that  
21 maybe Michael Blackburn had been sexually assaulting the  
22 kids?

23 A. Yes, ma'am.

24 Q. And then further, she said that she knew that he had  
25 a cellphone; correct?

1 A. Yes, ma'am.

2 Q. And then you guys spoke about the cellphone?

3 A. I asked her if she knew what it looked like.

4 Q. And she said she did?

5 A. Yes.

6 Q. And did you ask her where it was?

7 A. No. She said, I'll show you.

8 Q. She said she knew where it was?

9 A. Yes.

10 Q. And it was upstairs in a bedroom?

11 A. She didn't tell me where it was. She said, I'll show  
12 you.

13 Q. Okay. So then you went with her upstairs?

14 A. Yes, ma'am.

15 Q. And so then you went -- and it was a bedroom;  
16 correct?

17 A. Yes, ma'am.

18 Q. And it was Michael Blackburn's bedroom?

19 A. I wasn't sure at that time.

20 Q. I'm just going to show you what the Government marked  
21 as 23, because they showed you some pictures of that  
22 bedroom, correct, already? You looked at pictures of the  
23 bedroom previously? Is that better?

24 A. Yes, ma'am.

25 Q. So you already looked at some other pictures; right?

1 A. Yes, previously.

2 Q. And the pictures they showed you had little  
3 children's beds in them; correct?

4 A. Yes, ma'am.

5 Q. So there were two little children's beds in that  
6 room; right?

7 A. Yes, ma'am.

8 Q. But in addition to that, there's this big adult,  
9 grown-up mattress there; right?

10 A. That is an adult-sized mattress, yes.

11 Q. So you said you went into the bedroom with her; is  
12 that correct?

13 A. I stayed at the doorway.

14 Q. Okay. And Ms. Hatten went in and got the cellphone;  
15 correct?

16 A. Yes, she did.

17 Q. And the cellphone was over here in this wall unit;  
18 correct?

19 A. I don't remember exactly where it was at.

20 Q. You were not observing her when she went in to get  
21 the phone?

22 A. I did observe her, but I don't remember where she  
23 went.

24 Q. Okay. Do you remember that the phone was plugged  
25 into the wall?

1 A. No, because I don't remember where she went to.

2 Q. Okay. So is this kind of the only thing that you're  
3 having trouble remembering? It seemed like you had good  
4 memory of the details when you testified on Direct Exam.

5 A. Earlier I stated that I did not remember where she  
6 got it from.

7 Q. Okay. And you don't remember that it was plugged in?

8 A. No, because I don't remember where she got it from.

9 Q. So you don't remember seeing her unplug it?

10 MS. LIZARRAGA: Objection, your Honor. Asked and  
11 answered.

12 THE COURT: Sustained.

13 BY MS. KATZE:

14 Q. Now, you never asked Michael Blackburn for permission  
15 to go into his bedroom, did you?

16 A. No, because I did not know that was his bedroom.

17 Q. And you did not ask Michael Blackburn if it was okay  
18 to go get his phone, did you?

19 A. No, I didn't need to.

20 Q. You knew you were going upstairs with Franque Hatten  
21 to look for Michael Blackburn's phone; correct?

22 A. She said, I'll show you, and I went.

23 Q. My question is, you knew when you followed her  
24 upstairs that you were going upstairs to get Michael  
25 Blackburn's phone; correct?

1 A. I was going to go see where his phone was, yes.

2 Q. And did you go see where his phone was?

3 A. Yes. She handed it to me.

4 Q. In his bedroom?

5 A. I didn't know that was his bedroom.

6 Q. So again my question is -- if you could, just answer  
7 my question "yes" or "no." You were going upstairs with  
8 Franque Hatten; "yes" or "no"?

9 A. Yes.

10 Q. And she, you asked her to show you where the phone  
11 was; "yes" or "no"?

12 A. I didn't ask her to show me where the phone was. She  
13 said, I'll show you.

14 Q. And you said?

15 A. I said, okay.

16 Q. And then you followed her to find Michael Blackburn's  
17 phone; correct?

18 A. To see where his phone was, yes.

19 Q. And then she handed you Michael Blackburn's phone?

20 A. Correct.

21 Q. You did not ask Michael Blackburn for permission to  
22 go get his phone; is that correct?

23 A. Correct.

24 MS. KATZE: One moment, your Honor.

25 THE COURT: Sure.

1 MS. KATZE: I have nothing further. Thank you.

2 THE COURT: You may Redirect.

3 MS. LIZARRAGA: Thank you.

4 REDIRECT EXAMINATION

5 BY MS. LIZARRAGA:

6 Q. Special Agent Altamirano, before you went with  
7 Ms. Hatten upstairs to -- before you followed her upstairs  
8 and she was going to get the Defendant's phone, did you  
9 feel that you had any type of reasonable suspicion?

10 A. I had --

11 MS. KATZE: Objection. Outside the scope of  
12 Cross.

13 MS. LIZARRAGA: On Cross-Examination, she asked  
14 her specifically if she had asked Mr. Blackburn for  
15 permission to go get his cellphone, so I'm merely going  
16 over with her her mental state at the point that she goes  
17 back upstairs with Ms. Hatten.

18 THE COURT: I agree, it's not outside the scope.  
19 Overruled.

20 A. Okay, so I knew that there was images of child  
21 exploitation. I knew in that image there was a child's  
22 face. I knew I had seen that child in that apartment, and  
23 that victim was there. I knew that there are devices that  
24 you need in order to produce child pornography. So I was  
25 going with Hatten --

1 BY MS. LIZARRAGA:

2 Q. Let me just stop you there. Did you have any  
3 suspicion about who the offender was at that time?

4 A. At that time, yes. I believed it was Blackburn.

5 Q. Based on what?

6 A. His physical appearance, and what Ms. Hatten had just  
7 told me.

8 Q. Can you explain why you thought it was him based on  
9 his physical appearance?

10 A. Because on one of the pictures, it shows his belly  
11 area and his penis.

12 Q. So out of all the people that were in the house, did  
13 anyone else match that physical description?

14 A. No, they did not.

15 Q. And those were all things running through your mind  
16 before you went with Ms. Hatten upstairs?

17 MS. KATZE: Objection. Leading.

18 THE COURT: That's leading. Rephrase.

19 BY MS. LIZARRAGA:

20 Q. When had you -- the things that you just testified  
21 to, when had you made those connections?

22 A. I made the connection that due to his physical  
23 appearance, once I saw who else was in the house, that it  
24 was him.

25 Q. And when did you make the connection -- when did you

1 suspect that it was him?

2 A. Once we got into the room and all the adults were  
3 present downstairs, and then once Ms. Hatten told me her  
4 suspicions, it solidified my reasoning.

5 MS. LIZARRAGA: No further questions.

6 THE COURT: Just so I'm clear, the young child  
7 who is in the picture --

8 THE WITNESS: Yes, your Honor.

9 THE COURT: -- did she just come down the steps?

10 THE WITNESS: Yes, your Honor. She was coming  
11 down the stairway once we were making entry into the  
12 house, and then Detective Sabaugh went up the stairway and  
13 she went into Detective Sabaugh's arms.

14 THE COURT: So this is clear, this is before,  
15 then, Ms. Hatten had spoken to you?

16 THE WITNESS: Yes, your Honor. As I stated  
17 earlier, I saw the pictures, I knew what the child looked  
18 like. Once we made entry into the apartment, the child  
19 was coming down the stairwell. I saw the child, and I  
20 knew right then and there that the victims were in the  
21 house -- the victim. I thought it was just one victim.

22 THE COURT: All right. Any other questions of  
23 this witness?

24 MS. KATZE: No, your Honor.

25 MS. LIZARRAGA: No, your Honor. Thank you.

1 THE COURT: May the witness be excused?

2 MS. LIZARRAGA: Yes, your Honor.

3 THE COURT: Thank you.

4 MS. LIZARRAGA: The United States calls Special  
5 Agent Morjn Langer.

6 (MORJN LANGER, GOVERNMENT'S WITNESS, SWORN)

7 MR. GARCIA: Please have a seat and state your  
8 full name for the record.

9 THE WITNESS: Morjn Langer.

10 DIRECT EXAMINATION

11 BY MS. LIZARRAGA:

12 Q. Could you please spell your name for the record?

13 A. M-o-r-j-n L-a-n-g-e-r.

14 Q. Good morning.

15 A. Good morning.

16 Q. Where do you work?

17 A. I'm a Special Agent with Homeland Security  
18 Investigations here in Albuquerque, New Mexico.

19 Q. How long have you been with Homeland Security  
20 Investigations?

21 A. I was with Homeland Security Investigations in all  
22 its prior names since 2003 when it was created.

23 Q. And what were you doing before that?

24 A. Before that, I was a Special Agent with the  
25 Immigration and Naturalization Service since about 1995.

1 Q. What division are you currently assigned to?

2 A. I'm currently assigned to the Border Enforcement and  
3 Security Task Force, primarily doing human trafficking and  
4 human smuggling investigations.

5 Q. Is that the only division that you've ever worked in?

6 A. No.

7 Q. What other divisions have you worked in?

8 A. In Albuquerque, I've also worked in the Joint  
9 Terrorism Task Force, I've worked in the Child  
10 Exploitation Unit, as well as more general investigative  
11 groups that covered financial investigations, narcotics  
12 investigations, and various immigration violations. And  
13 then I've worked other program areas in New York City and  
14 a community north of New York City, as well.

15 Q. I want to talk to you a little bit about your  
16 experience with child exploitation. How long were you in  
17 that division?

18 A. From approximately April of 2012 until March of this  
19 year.

20 Q. And have you received any specialized training  
21 regarding child exploitation cases?

22 A. Yes. I've taken several classes that were sponsored  
23 through the Internet Crimes Against Children Task Force  
24 here in New Mexico. Some of those classes were given by  
25 an organization called Search, which is like a nationally

1 recognized organization that provides training on internet  
2 and child exploitation investigations.

3 I've taken classes on child pornography, peer-to-peer  
4 investigations, and I'm also a certified undercover online  
5 chatter, which is through ICAC, or an Internet Crimes  
6 Against Children class.

7 Q. What do you have to do to get certified?

8 A. It's approximately a four- to five-day class, eight  
9 hours a day. Some of it is like classroom instruction,  
10 and some of it is like practical hands-on type learning.

11 Q. So, were you in the Child Exploitation Division back  
12 in December of 2012 -- or excuse me; 2013?

13 A. Yes.

14 Q. Okay. And are you familiar with the investigation  
15 against Michael Blackburn?

16 A. Yes.

17 Q. Do you see him here in the courtroom today?

18 A. Yes. He's seated at the defense table in the, like,  
19 light green jump suit.

20 MS. LIZARRAGA: Your Honor, may the record  
21 reflect that the witness has correctly identified the  
22 Defendant.

23 THE COURT: The record will so reflect.

24 MS. LIZARRAGA: Thank you.

25

1 BY MS. LIZARRAGA:

2 Q. I want to talk to you specifically about December 17,  
3 2013. Do you remember that day?

4 A. Yes.

5 Q. What happened on that day?

6 A. That was the day that we conducted a knock and talk  
7 style operation at the apartment where Michael Blackburn  
8 was living, and then executed a subsequent Federal search  
9 warrant that night, or evening.

10 Q. Okay. So I want to kind of go through that with you.  
11 On the morning of December 17th, what was your function?

12 A. Basically, just to assist in the security of the  
13 knock and talk, to make sure that whatever adults we  
14 encountered were kind of secured and kept in an area where  
15 they couldn't have been of harm to the other agents.  
16 After we received consent to enter the --

17 Q. Excuse me. I just want to break that up there --

18 A. Okay.

19 Q. -- because I don't want to go quite right there yet.

20 So, that morning of December 17th, before the knock  
21 and talk actually happened, what information did you have  
22 about the investigation?

23 A. I knew that Agent Breen had been the Case Agent on  
24 this investigation. I knew that he was investigating, I  
25 believe at that time it was two photographs that had been

1 pulled off of TOR network that showed an extremely young  
2 female being molested by an adult male. And I had done  
3 some work with Agent Breen interviewing some residents of  
4 an apartment complex in Albuquerque's northwest sector of  
5 the city where the longitude and latitude of at least one  
6 of the photographs was shown to have been taken in that  
7 area or at that spot.

8 Q. Special Agent Langer, I'm showing you what's been  
9 admitted as Government's Exhibit 48. I know that it's  
10 redacted, but do you recognize that photo?

11 A. Yes.

12 Q. What is that photo?

13 A. That's one of the TOR photos, I believe.

14 Q. And when you say TOR, what is TOR?

15 A. TOR stands for The Onion Router. It's a section of  
16 the internet that attempts to hide where the IP addresses  
17 are emanating or originating from using a routing system,  
18 different routers. So the IP might show like it's in  
19 Brazil when, in fact, it's somewhere completely different.

20 Q. Did you have any other information about the photo,  
21 other than that it was found on TOR?

22 A. Just that it had a longitude and latitude associated  
23 with it, that it had the device that had taken the photo,  
24 which I believe was an iPhone, and that the adult in the  
25 photo was definitely male and definitely heavy-set.

1 Q. All right. I'm putting Government's Exhibit 48 back  
2 up, and I know it's kind of difficult to see from this  
3 photo, but where in this photo can you tell that there is  
4 a male?

5 A. Well, at the extreme kind of bottom of the photo, you  
6 can somewhat make out the stomach area, and then in the  
7 sanitized part of it, there is a penis I believe  
8 attempting to penetrate the young female, as I recall.

9 Q. I'm showing you Government's Exhibit 49. Do you  
10 recognize this photo?

11 A. Yes. That, I believe, was the second TOR photo that  
12 Agent Breen received, or was made aware of.

13 Q. So prior to the morning of December 17th, had you had  
14 an opportunity to look at both of these photos,  
15 Government's Exhibits 48 and 49?

16 A. Yes. Probably the first one more so than the second  
17 one.

18 Q. And that would be Government's Exhibit 48?

19 A. Yes.

20 Q. All right. So the morning of the 17th, what was  
21 the plan? You stated that you were at a residence; is  
22 that correct?

23 A. We had met probably around 7:00 in the morning and  
24 had kind of a quick briefing, and the plan was to knock on  
25 the door of the residence, I believe it was 5601 Wyoming,

1 and attempt to speak to whoever is there and get consent  
2 to enter the home and try to figure out if the victimized  
3 children were there, and who the offender was.

4 Q. I'm showing you Government's Exhibit 1. Do you  
5 recognize that?

6 A. Yes. That's 5601 Wyoming.

7 Q. Okay. So the morning of the 17th, who actually  
8 went and knocked on the door?

9 A. It was a Bernalillo County Sheriff's officer,  
10 Detective Theresa Sabaugh, who I believe was first, and I  
11 believe Agent Breen was second to the door.

12 Q. And where were you when they went to go knock on the  
13 door?

14 A. I was by the door, but quite a ways back from like  
15 the front of the group trying to get into the house, or  
16 gain entry to the house.

17 Q. Okay. So from the picture that we're looking at,  
18 Government's Exhibit 1, would we be able to see where you  
19 were when they went and knocked on the door?

20 A. Probably towards the lower left-hand corner of the  
21 picture. Probably somewhere down towards there.

22 Q. All right. So, were you able to hear Detective  
23 Sabaugh and Special Agent Breen when they knocked on the  
24 door?

25 A. I probably heard the knock, yes.

1 Q. what happened after they knocked?

2 A. I didn't see any part of the consent to enter the  
3 home or anything like that. I was too far back to hear  
4 any of the conversation or even see who answered the door.

5 Q. And so what were you able to see?

6 A. I was just -- I definitely know that they knocked,  
7 and at some point after they knocked they told us that  
8 they had gotten consent to go into the house. And then we  
9 all went in, or most of us went in.

10 Q. So, what did you do when you got inside the house?

11 A. I stayed on the ground floor. The house was like a  
12 duplex style apartment or townhome, and I just went  
13 through some of the rooms downstairs and made sure that  
14 there were no people that we weren't aware of in the  
15 rooms, or nothing that could hurt us, like a weapon.

16 And then eventually the three adults that were home  
17 ended up kind of in the rear room of the downstairs, and I  
18 ended up in that room with them.

19 Q. I'm showing you Government's Exhibit 11. Do you  
20 recognize that?

21 A. Yes. That's like that rear kind of living room where  
22 all the adults ended up.

23 Q. Once you got inside the house, were you able to  
24 determine whether there were -- you stated that there were  
25 three adults. Were you able to determine whether there

1 were any minor children there?

2 A. Yeah. There were two small children, a boy and a  
3 girl.

4 Q. And did you notice anything about either of the  
5 children?

6 A. No. I didn't really have much to do with the  
7 children that morning.

8 Q. But you were aware that they were there?

9 A. Yes.

10 Q. All right. And so you testified that you ended up in  
11 this back room, the room we're looking at in Government's  
12 Exhibit 11; correct?

13 A. Yes.

14 Q. Who was in that room with you?

15 A. It was myself, Keifer Orfield, Franque Hatten, and  
16 Michael Blackburn.

17 Q. And what were you doing in the room with them?

18 A. More or less just security, keeping them kind of in  
19 one place while everyone else did the rest of the security  
20 sweep of the house. And then eventually -- I just stayed  
21 in that room, and I began kind of having small talk with  
22 all three of them, but primarily with Michael.

23 Q. Why were you having small talk primarily with  
24 Michael?

25 A. Well, I was aware that the photos on TOR depicted a

1 heavy-set adult male, and Michael was the only one in the  
2 residence that fit that description. So it was my  
3 suspicion that Michael was the perpetrator of the abuse.

4 Q. And so what were you talking to him about?

5 A. Initially, just small talk. Kind of rapport building  
6 type stuff. And then I eventually asked him about his  
7 cellphone, whether he had a cellphone, and he said he did.  
8 And I asked him if it was an iPhone, and he said, no.  
9 And I asked if he had ever had an iPhone, and he said,  
10 yes, but he had sold it at either a store or a kiosk at  
11 the Cottonwood Mall.

12 Q. While you were engaging in conversation with the  
13 Defendant, did he appear to have trouble understanding  
14 anything that you were asking him, or anything that was  
15 going on in the conversation?

16 A. No. He appeared very friendly, very cooperative. He  
17 was quite engaged in the conversation, and seemed free and  
18 willing to talk to me as much as I would talk to him.

19 Q. In your training and experience, have you ever dealt  
20 with individuals that have a learning disability?

21 A. Yes.

22 Q. Did it appear to you that the Defendant had any type  
23 of learning disability?

24 A. No.

25 Q. So, you stated that you're talking to him about a

1 cellphone. Did you notice anything simultaneously going  
2 on while you're having that conversation with him?

3 A. Well, the other agents and officers that were there  
4 were doing other things in the house, and I was aware that  
5 that was going on, but I was mainly focusing on the three  
6 adults in that room.

7 Q. Did the three adults in that room remain in that room  
8 the whole time?

9 A. Yes. Well, at one point, Franque Hatten, who is an  
10 adult female, asked to speak to me in private, and I  
11 didn't want to leave the other two, Michael and Keifer,  
12 alone. Plus, I thought maybe she would be more  
13 comfortable speaking to a female officer or agent. So I  
14 asked Agent Altamirano if she would speak to Ms. Hatten in  
15 private, and then the two of them left the room and I  
16 think went outside.

17 Q. What happened when they came back, or did they come  
18 back?

19 A. They came back, and they presented me with a phone  
20 that was identified as Michael Blackburn's cellphone.

21 Q. And what did you do?

22 A. I took it. I began by asking Michael if this is his  
23 cellphone, and he said, yes. And then I asked him if it  
24 would be all right, or if it would be okay if I  
25 consensually searched the cellphone, and he said, yes.

1 I either asked someone to watch the three of them in  
2 the room and went and got a Consent to Search form, or I  
3 asked someone to go get one from a vehicle. The Consent  
4 to Search form was brought back in, and I went over the  
5 form with Michael. I didn't read it to him, but I --

6 Q. Let me just stop you right there. I'm showing you  
7 what's been previously marked as Government's Exhibit 27.  
8 Do you recognize this?

9 A. Yes. That's the Consent to Search form that I used  
10 that morning for Michael's cellphone.

11 Q. Does Government's Exhibit 27 accurately reflect the  
12 Consent to Search that you used that day on  
13 December 17th?

14 A. Yes.

15 MS. LIZARRAGA: Your Honor, I move for the  
16 admission of Government's Exhibit 27.

17 MS. KATZE: No objection.

18 THE COURT: It is admitted.

19 MS. LIZARRAGA: Thank you.

20 BY MS. LIZARRAGA:

21 Q. So, Special Agent Langer, you said that you had  
22 gotten verbal consent from the Defendant?

23 A. Yes, initially.

24 Q. Okay. And then tell me about what you did with this  
25 form.

1 A. I kind of laid it on a -- there was like a coffee  
2 table in the room, and I went over it with Michael. I  
3 explained to him, once again, that he didn't have to sign  
4 it and didn't have to give consent, and that if he was  
5 doing it, it would be of his own free will without any  
6 type of coercion or threats or anything from me.

7 He again stated that he would give consent to allow  
8 his phone to be searched, so I had him sign, date and  
9 print his name at the bottom of the form there.

10 Q. All right. Just really quickly, Government's  
11 Exhibit 10, do you recognize that?

12 A. Yes. That's the room that this all happened in.

13 Q. You had mentioned a coffee table. Do you see one in  
14 Government's Exhibit 10?

15 A. Yes. It's the one like right in the middle of the  
16 room with kind of -- it looks like glass on top.

17 Q. So that was the coffee table that you put --

18 A. Yes.

19 Q. -- Government's Exhibit 27 on? All right. And so  
20 going back to Government's Exhibit 27, this up here, whose  
21 handwriting is this?

22 A. That's mine.

23 Q. All right. So the entire portion of the Consent to  
24 Search, excluding the box, that's all your handwriting?

25 A. Yes.

1 Q. All right. And then down here in the box, we see,  
2 "Name (Please Print)." whose handwriting is that?

3 A. That's Michael Blackburn's.

4 Q. And the signature line, whose handwriting is that?

5 A. Michael Blackburn.

6 Q. And the date and time?

7 A. Michael Blackburn.

8 Q. And witnesses?

9 A. That's my signature and title.

10 Q. Okay. while you were going over this form with the  
11 Defendant, did he have any questions for you?

12 A. No.

13 Q. Did he appear to have difficulty understanding  
14 anything that you were telling him?

15 A. No.

16 Q. So, what did you do after you received consent from  
17 the Defendant to search his phone?

18 A. Well, at some point I realized the phone was pattern  
19 locked, so I asked Michael for the pattern lock, and he  
20 provided it. And I believe it's drawn on the back of the  
21 form.

22 Q. All right. So I'm going back to Government's  
23 Exhibit 27, and I'm turning it over. What are we looking  
24 at there?

25 A. That's the pattern lock code to unlock it that

1 Michael provided to me that morning.

2 Q. So, what happened after the Defendant provided you  
3 with the pattern lock?

4 A. I unlocked the phone, and I believe went right to the  
5 photo galleries and began looking, and the first two  
6 images I looked at were both images of child pornography.

7 Q. Were you able to identify the children in the photos?

8 A. Yes. I believe the children were the ones that were  
9 in the residence at the time.

10 Q. So what is going through your mind as soon as you see  
11 these photos?

12 A. Well, particularly one of them depicted the same,  
13 what appeared to be the same heavy-set male that are in  
14 the TOR photos. So my thought was that Michael Blackburn  
15 was the perpetrator in the photos.

16 Q. And where did you find the photos again?

17 A. I believe it was in the photo gallery or photo  
18 section of the cellphone.

19 Q. On the Defendant's phone?

20 A. Yes.

21 Q. Okay. And so what did you do after you found those  
22 child pornography photos?

23 A. I alerted Agent Breen that they were on the phone,  
24 and Michael was placed under arrest shortly after I did  
25 that.

1 Q. Are you the one who placed him under arrest?

2 A. No.

3 Q. Do you know who did?

4 A. I believe it was Agent Bonza.

5 Q. And what happened after the Defendant was placed  
6 under arrest?

7 A. He was led out of the apartment, or townhome.

8 Q. And what did you do?

9 A. I just stayed with Ms. Hatten and Keifer Orfield.

10 Q. So, Special Agent Langer, who is all in the house at  
11 this point?

12 A. After Michael is arrested?

13 Q. Yes.

14 MS. KATZE: Objection. Relevance.

15 THE COURT: What's the relevance?

16 MS. LIZARRAGA: I'm fine moving on.

17 THE COURT: Okay.

18 BY MS. LIZARRAGA:

19 Q. What did you do after Michael Blackburn was arrested?

20 A. I just stayed in the room with Franque and Keifer  
21 until --

22 MS. KATZE: Same objection, your Honor.

23 Relevance to this whole period.

24 THE COURT: Overruled.

25 A. I just stayed in the room with Keifer and Franque

1 until the few loose ends we had to tie up were done, and  
2 then we all left the residence.

3 Q. Okay. while you were there in the morning, did you  
4 ever search the house?

5 A. No.

6 Q. Did you ever observe anyone else searching the house?

7 A. No.

8 Q. You said that you had to tie up some loose ends.  
9 what are you talking about?

10 A. We had to get the Child, Youth and Family Department,  
11 or division there to take custody of the two children, and  
12 we also had to arrange to get Franque and Keifer down to  
13 the BCSO Main station to be interviewed.

14 Q. And so at what point did you leave the house?

15 A. It was probably sometime between 9:00 and 10:00 in  
16 the morning.

17 Q. And what was your plan after leaving the house?

18 A. Agent Breen was going to secure a Federal search  
19 warrant based on the child pornography images that were  
20 found, and we were going to keep the location secure until  
21 that warrant could be obtained.

22 Q. Did you stay at the location after you left the  
23 house?

24 A. Yes. We stayed outside, but not inside.

25 Q. Did you observe anyone go into the house while you

1 were keeping it secure?

2 A. Not until probably about 7:00 P.M. Some State  
3 officers entered because they had a State warrant based on  
4 the child abuse or child molestation charges.

5 Q. And was a Federal search warrant eventually obtained?

6 A. Yes.

7 Q. Do you remember about what time?

8 A. Probably we were notified it was signed around

9 9:00 P.M.

10 Q. And did you help participate in the Federal search  
11 warrant of the home?

12 A. Yes.

13 MS. LIZARRAGA: Your Honor, may I have a moment?

14 THE COURT: Sure.

15 MS. LIZARRAGA: Your Honor, I pass the witness.

16 CROSS-EXAMINATION

17 BY MS. KATZE:

18 Q. Good morning.

19 A. Good morning, Counselor.

20 Q. Did you write any reports regarding this case?

21 A. No.

22 Q. Okay. I didn't think so. I didn't get any.

23 You indicated that when you were in the living room,  
24 that you were talking to Mr. Blackburn, chatting,  
25 whatever.

1 A. Yes, correct.

2 Q. At any point, did you read him his Miranda warnings?

3 A. No.

4 Q. You indicated that you were given a cellphone?

5 A. Yes.

6 Q. who did you actually get the phone from?

7 A. I believe it was Agent Altamirano.

8 Q. And did you see where she got it?

9 A. No.

10 Q. So you had the phone in your hand and you went to  
11 Michael Blackburn, and you asked him if he would let you  
12 look in the phone?

13 A. No. I initially asked if it was his phone.

14 Q. Okay. But he saw you had the phone?

15 A. I presume he did, yes. When I asked if it was his  
16 phone, I held it up and showed it to him.

17 Q. Okay. And then you talked on Direct Examination, I  
18 guess after he said it was his phone, then you asked if  
19 you could do, what, with it?

20 A. I asked if he would allow me to consensually search  
21 the phone without a warrant.

22 Q. And then, also, you went over on Direct Examination  
23 the form.

24 A. Yes.

25 Q. And you said that you actually went over the form

1 with him? You said that you explained his rights to him  
2 and explained what consent to search meant?

3 A. I explained the form to him, yes.

4 Q. And when you say you explained the form to him, what  
5 do you mean?

6 A. I find it more helpful, that people tend to  
7 understand the form better when I explain it in summary  
8 rather than read it to them. I find they often don't  
9 understand -- they find it easier to understand the form  
10 when I explain it to them rather than just be like, here's  
11 the form, read it.

12 But I'm very cautious with those forms. I don't like  
13 to bully anyone into signing them. And I reiterate, you  
14 don't have to, this is entirely of your own free will.  
15 And, you know, if they ever have any kind of doubts, I'll  
16 lean towards just not doing it and getting a search  
17 warrant.

18 Q. So it's important to you that they understand what  
19 they're signing?

20 A. Of course.

21 Q. Age it's important to you that they understand what  
22 rights they give up when they sign a form like that?

23 A. Absolutely.

24 MS. KATZE: May I have a moment?

25 THE COURT: Yes.

1 MS. KATZE: Nothing further. Thank you.

2 THE COURT: Is there any Redirect?

3 MS. LIZARRAGA: No, your Honor.

4 THE COURT: May the witness be excused?

5 MS. LIZARRAGA: Yes, your Honor.

6 THE COURT: Thank you.

7 THE WITNESS: Thank you.

8 MS. LIZARRAGA: The United States calls Detective  
9 Theresa Sabaugh.

10 (THERESA SABAUGH, GOVERNMENT'S WITNESS, SWORN)

11 MR. GARCIA: Please have a seat and state your  
12 full name for the record.

13 THE WITNESS: Theresa Sabaugh.

14 DIRECT EXAMINATION

15 BY MS. LIZARRAGA:

16 Q. Good afternoon, Detective.

17 A. Good afternoon.

18 Q. Could you please spell your name for the record.

19 A. T-h-e-r-e-s-a, and my last name is S-a-b, as in boy,  
20 -a-u-g-h.

21 Q. Where do you work?

22 A. The Bernalillo County Sheriff's Department.

23 Q. How long have you been with the Bernalillo County  
24 Sheriff's Office?

25 A. Twelve years.

1 Q. And what is your title?

2 A. I'm a detective with the Special Victims Unit.

3 Q. What is the Special Victims Unit?

4 A. We do crimes against children and sex crimes, adult  
5 and child.

6 Q. How long have you been with the Special Victims Unit?

7 A. A little over four years now.

8 Q. And what were you doing before you were with the  
9 Special Victims Unit?

10 A. I was in Field Service for a few years. I did  
11 narcotics for two years, and white collar for one year.

12 Q. I want to go over some of your training specifically  
13 regarding any type of sexual exploitation or sexual abuse  
14 of children. Can you highlight some of the training that  
15 you've received in that field?

16 A. I've done approximately 300 hours of crimes against  
17 children, sex crimes investigations. About half of those  
18 are internet crimes against children, which would include  
19 child exploitation.

20 Q. And have you been part of any details?

21 A. Yes. In the last two years, I've been a part of the  
22 SPEED detail, which is the Sexual Predator Exploitation  
23 Enforcement Detail, including Homeland Security and the  
24 Albuquerque Police Department.

25 Q. And do you work in conjunction with Federal agents on

1 your cases?

2 A. Yes.

3 Q. I want to take you back to December of 2013. You  
4 were working with the Special Victims Unit at that time?

5 A. Yes.

6 Q. And are you familiar with a case that eventually led  
7 to the arrest of Michael Blackburn?

8 A. Yes, ma'am.

9 Q. Do you see Michael Blackburn here in the courtroom  
10 today?

11 A. I do.

12 Q. Could you please point out a piece of clothing that  
13 he's wearing and tell us where he's sitting?

14 A. He's sitting to my right in a fluorescent shirt.

15 MS. LIZARRAGA: Your Honor, may the record  
16 reflect that the witness has correctly identified the  
17 Defendant.

18 THE COURT: The record will so reflect.

19 BY MS. LIZARRAGA:

20 Q. All right. So Detective Sabaugh, can you tell me how  
21 your involvement in this case began?

22 A. In December of 2013, Special Agent Breen had advised  
23 me that he had received a picture from another office in  
24 his department that depicted a young child getting  
25 penetrated by an adult penis. In that, it showed EXIF

1 data, which would be the GPS coordinates, I guess, to the  
2 picture that was taken, which led us to the northwest part  
3 of Albuquerque where we did a canvas of the apartments  
4 over there.

5 Q. So based on your investigation, were you able to  
6 determine where you thought that the potential victim in  
7 the photo might be living?

8 A. Special Agent Breen did, yes.

9 Q. And when did your heavy involvement in the case  
10 begin?

11 A. The Friday before we went to the Mitchells'  
12 residence, Special Agent Breen had called me late that  
13 Friday afternoon and advised me that he had located the  
14 address, 5601 Wyoming, to be the address where the  
15 children are residing presently, at the time. So that was  
16 when I first, like, heavily got into the case.

17 It still wasn't my case. It was still the Homeland  
18 Security Investigations case, until Monday when we had a  
19 meeting about the specifics, what we were going to do.

20 Q. Do you remember the actual date of that Monday?

21 A. December -- I'd have to look at the paper, I'm sorry,  
22 or my report.

23 Q. Would looking at your report help refresh your  
24 recollection?

25 A. Yes. I'm sorry.

1 MS. LIZARRAGA: Your Honor, may I approach?

2 THE COURT: You may.

3 A. I apologize, I should know the date. Okay.

4 December 13th was a Friday. December 16th we met at the  
5 Homeland Security Investigations office to form a game  
6 plan. And December 17th is when we went to the  
7 residence.

8 BY MS. LIZARRAGA:

9 Q. Okay. So at what point in time did this become your  
10 case?

11 A. December 16th, late in the afternoon.

12 Q. And so why did you not immediately go out to the  
13 residence on the afternoon of December 16th?

14 A. At the time, we weren't sure if the suspect, which we  
15 had thought previously may have been the brother, we were  
16 told that they were living in separate residences. We  
17 didn't find the exigency at the time to go out at that  
18 time. We figured it would be better to form a game plan  
19 and get my resources working -- organized; I'm sorry.

20 Q. No problem. So on December 16th, did you know who  
21 Michael Blackburn was?

22 A. No.

23 Q. Did you have any idea -- you said the Mitchells. Who  
24 are they?

25 A. That was Thomas and Maria Mitchell. Those are the

1 kids', the two two-year-olds parents.

2 Q. And you stated that you were suspecting the uncle?

3 A. When we discussed the case, when we saw the picture,  
4 and of course it was just the penis and a belly, we only  
5 knew two male subjects to be living with the kids, one  
6 Thomas, and one, I believe James is the name, to be living  
7 there, and James fit the profile better than Thomas did,  
8 as far as what his recorded stature was.

9 Q. Okay. So on December 16th, this becomes your case.  
10 Tell me about some of the things that you did on the 16th  
11 in preparation for going out to the house on the 17th.

12 A. Of course, it was still in conjunction with Homeland  
13 Security, so we had to get both supervisors on board with  
14 what we were going to do, along with APD, the Albuquerque  
15 Police Department.

16 We organized who was going to go out to the house  
17 with us. I called the safe house and scheduled two safe  
18 house interviews, hoping that the kids would be able to  
19 talk. I also called CYFD in hopes that they would come  
20 out with us to the welfare check in the morning, which  
21 they did not do. But I was trying to get all that  
22 organized.

23 Q. On the 16th?

24 A. On the 16th.

25 Q. Okay. And so let's talk now about December 17th.

1 You testified that at this point, this is your case; is  
2 that correct?

3 A. Yes.

4 Q. And so what was the game plan on the 17th?

5 A. Well, we were going to do a welfare check on the  
6 kids.

7 Q. Let me just stop you there. Can you please explain  
8 what a welfare check is?

9 A. Yes. Basically, whenever we get any report of any  
10 kind of sexual abuse or physical abuse or neglect  
11 involving children, or a child, we will go to the house,  
12 if we don't have probable cause for a search warrant, we  
13 will go to the house and conduct what we call a welfare  
14 check, just to make sure that the kids are being provided  
15 for, they're not being neglected, they're not being  
16 abused, and if we have to open up an investigation.

17 Q. All right. I'm showing you New Mexico State Statute  
18 32A-4-3. Do you recognize this statute?

19 A. Yes. That's our Duty to Report Child Abuse.

20 Q. You said it's your Duty to Report. Can you explain  
21 that duty?

22 A. So, basically, I got the investigation on Monday  
23 afternoon. It's my duty to investigate it within I  
24 believe 48 hours of the initial report. I am liable if I  
25 don't, basically. If I don't go out there and investigate

1 it, then I would be in trouble.

2 Q. So does this statute mandate that you actually do go  
3 out and investigate?

4 A. Yes.

5 Q. All right. And in conjunction with this statute, I'm  
6 showing you New Mexico State Statute 30-6-4. Do you  
7 recognize this statute?

8 A. Yes.

9 Q. And can you explain what your understanding of this  
10 statute is?

11 A. We use this when we go out to do the welfare checks.  
12 When we get a referral or another report indicating child  
13 abuse or neglect, we go out there and that gives us the  
14 ability to enter a home and to investigate. So they can't  
15 obstruct us. They can't deny access to the kids to do an  
16 investigation.

17 Q. So if you go to a home where you are investigating  
18 allegations of sexual abuse, under the law do you need  
19 consent to enter?

20 A. No. We can enter if we believe that the children are  
21 there.

22 Q. And that derives from New Mexico State Statute  
23 30-6-4?

24 A. Yes.

25 Q. All right. So the morning of December 17th, kind of

1 just take me through what happened. Did you have a  
2 briefing before you got to the residence?

3 A. Yeah. I believe we met at a building down the  
4 street, where we all met, so that way we weren't just  
5 meeting in front of their house. We all -- we gave them  
6 the information, which most people already knew at this  
7 point, what the objective was. We had already arranged  
8 everything the day before. And then we all caravanned over  
9 there to the residence, 5601 Wyoming.

10 Q. When you say, we all, who are you referring to?

11 A. I mean, there were Homeland Security Agents Morjn  
12 Langer, Christina Altamirano, Ryan Breen. Albuquerque  
13 Police Department detectives, their Child Exploitation  
14 detail, Jake Storey, Josh Hawkes, and their Sergeant, Jeff  
15 Petersen.

16 Q. All right. I'm showing you Government's Exhibit 1.  
17 Do you recognize this photo?

18 A. Yes. That's the residence.

19 Q. So, what happened after your briefing?

20 A. We all caravanned to 5601 Wyoming.

21 Q. And what happened when you got there?

22 A. I knocked on the door.

23 Q. Who specifically went up to the door?

24 A. I believe it was me and Special Agent Breen.

25 Q. Okay. So at this point, this is your case still?

1 A. Yes.

2 Q. All right. So you knock on the door. What happens  
3 after that?

4 A. Mr. Blackburn answered the door wearing only boxers.  
5 I don't remember specifically everything, but I remember  
6 talking to him and I asked him, like, who lives there, and  
7 advising him that we were looking for the Mitchells, and  
8 he said that they were out of town and that he lived there  
9 with the two children.

10 Q. Did you identify yourself as law enforcement?

11 A. Yes. I had a jacket on that had my badge of office  
12 on it, and I introduced myself.

13 Q. Other than your jacket, do you remember what else you  
14 were wearing?

15 A. I was wearing a gray shirt and gray pants, plain  
16 clothes.

17 Q. So you weren't in full uniform?

18 A. No.

19 Q. All right. Did the Defendant give you consent to  
20 enter?

21 A. Yes. He allowed us inside the residence.

22 Q. What happened once you got inside the residence?

23 A. As we were talking to him in the foyer, I don't  
24 remember specifics, but I remember a lot of things were  
25 going through my head. But the children came down the

1 stairs as we were talking to Mr. Blackburn, wearing only  
2 their diapers.

3 Q. I'm showing you Government's Exhibit 4. What are we  
4 looking at here?

5 A. Those are the stairs.

6 Q. All right. And I'm showing you Government's  
7 Exhibit 7. What are we looking at here?

8 A. That's the -- okay, that's looking this way. That's  
9 the foyer, the entryway of the residence.

10 Q. So when you walk into the house, the stairs are  
11 fairly close to the door?

12 A. They're very close. They're right there.

13 Q. All right. So what happened when you observed -- you  
14 said you observed some children coming down the stairs?

15 A. I immediately recognized Jane Doe No. 1 from the  
16 picture. She has very distinctive blond hair and she's  
17 little. She was wearing only her diaper. So my  
18 intention, then, went to the children.

19 Q. So prior to getting to the residence, you had  
20 observed the pictures that were part of Special Agent  
21 Breen's investigation?

22 A. I did see a sanitized photo of Jane Doe No. 1, yes.

23 Q. I'm showing you Government's Exhibit 49. Do you  
24 recognize that?

25 A. Yes.

1 Q. Is that the photo that you're referring to?

2 A. Yes.

3 Q. Okay. So based on this photo, you were able to  
4 recognize -- you stated her name was Jane Doe No. 1?

5 A. Jane Doe No. 1.

6 Q. Right away?

7 A. Right away.

8 Q. And what did you do then? As soon as you recognized  
9 Jane Doe No. 1, tell me what is going through your mind at  
10 that point.

11 A. A lot of things are going through my mind. I'm  
12 thinking, okay, there are the kids, there's this guy that  
13 fits the description. I was told about the belly of a  
14 white male. We didn't know who he was. So a lot of  
15 things were going through my head, like okay, now what do  
16 we have to do?

17 I wanted to get the children clothed, so I asked Jane  
18 Doe No. 1, I told them, let's go upstairs and get you  
19 clothes, and she jumped right into my arms without any  
20 hesitation, even though I was a stranger.

21 Q. Can you describe physically the state of the  
22 children?

23 A. They looked shabby. They didn't look like they had  
24 brushed their hair in a lot of days. They didn't look  
25 like they had bathed. They were just in diapers. They

1 didn't look well kept at all.

2 Q. All right. And at that point, did you have any  
3 suspicion as to who the offender might be?

4 A. Yes. I thought it was Michael Blackburn.

5 Q. Okay. So Jane Doe No. 1 jumps in your arms. What do  
6 you do after that?

7 A. I take them upstairs to try to find them some  
8 clothes. I knew that at that point we were going to be  
9 taking the kids on a 48-hour hold and they would need  
10 clothing.

11 Q. And so, where upstairs did you go?

12 A. Once you go upstairs, I believe their bedroom was to  
13 the left. And so I just went there.

14 Q. All right. I'm showing you Government's Exhibit 19.  
15 Do you recognize that?

16 A. Yes. That's their bedroom.

17 Q. And how did you know that it was their bedroom?

18 A. I believe -- I can't remember if there were two or  
19 just one, but there was one toddler bed. There was a  
20 bigger bed in there, also. I do believe there were two.  
21 I thought there were two toddler beds. Plus, there were  
22 toys and clothes on the floor, so it was kind of apparent  
23 that it was the kids' bedroom.

24 Q. I'm showing you Government's Exhibit 21. I think we  
25 can see two beds in that picture. Do you agree?

1 A. Yes.

2 Q. All right. Were you able to observe how many  
3 bedrooms were upstairs?

4 A. You know, I didn't look through the house very much.  
5 Other detectives were clearing it for additional  
6 residents. But my focus was on the children. I went  
7 right up to the bedroom to try to find them some clothes.

8 I remember there being another bedroom over to the  
9 right, I believe, and a bathroom, but I don't remember if  
10 there were two bedrooms or just one.

11 Q. Okay. So you take -- we've talked about Jane  
12 Doe No. 1. Was there another child there, as well?

13 A. There was another two-year-old, her brother, John  
14 Doe No. 1.

15 Q. Okay. And so you're with both of them?

16 A. Yes.

17 Q. And what were you doing when you were upstairs with  
18 them?

19 A. Well, there were other detectives that were clearing  
20 the residence, and at that point we were all trying to  
21 find them clothes. And then I think at a certain point, I  
22 ended up breaking off and I started calling CYFD to try to  
23 get a CYFD investigator down there right away, because we  
24 would need one immediately.

25 Q. And were you able to do that?

1 A. Yes.

2 Q. What other things did you start to arrange for?

3 A. I noticed that neither child could speak, or they  
4 weren't verbal at all. Jane Doe No. 1, almost three years  
5 old, couldn't even say her name yet. So I knew the safe  
6 houses weren't going to happen. So I called the safe  
7 house to cancel them.

8 But most of my time was on with CYFD, because I had  
9 to call the Central Intake. It just takes a long time to  
10 do a referral, because they made me do an emergency  
11 referral versus coming out with us to do the welfare  
12 check.

13 Q. As part of your job, do you often work with CYFD in  
14 situations like this?

15 A. Yes.

16 Q. What's the point of calling CYFD?

17 A. Well, we knew the kids were going to be taken into  
18 custody. The parents weren't home. They were in  
19 California. There were two other strangers living in the  
20 home that we didn't know who they were. I had been told  
21 by Special Agent Altamirano that Franque had indicated to  
22 her that she believed that Blackburn was sexually abusing  
23 the kids, so at that point we knew that they weren't going  
24 to stay in that home, because we would need to do an  
25 investigation, a thorough investigation.

1 Q. So what happened after you were done making these  
2 phone calls?

3 A. The next thing I remember is being in the car with  
4 Michael Blackburn and Special Agent Breen. I was on the  
5 phone the majority of the time. But I was in the back  
6 seat, and Michael Blackburn was in the front seat, in the  
7 passenger seat.

8 Q. Did you talk to the Defendant at all while you were  
9 in the car?

10 A. No.

11 Q. And where did you take him?

12 A. To the John Price Law Enforcement Center. We call it  
13 the Main, over here at 400 Roma.

14 Q. And what happened when you got there?

15 A. We put him in an interview room.

16 Q. What did you do after you put him in an interview  
17 room?

18 A. Well, Franque and Keifer, the two people that were  
19 staying with them, they had indicated, or she had  
20 indicated that she felt they had been sexually abused, so  
21 we asked them to voluntarily come to the Main for an  
22 interview. So we were waiting for them to show up,  
23 because I wanted to have what they had to say before I  
24 went in to talk to Mr. Blackburn.

25 Q. Why did you want to hear what they had to say before

1 you went to interview the Defendant?

2 A. It's rare that suspects in these kinds of crimes just  
3 tell us everything right up front, or be honest, so I  
4 wanted to find out more information. It's always better  
5 to have more information before you go in for an  
6 interview.

7 Q. Do you remember about what time you got to the  
8 station with the Defendant?

9 A. It might have been around 8:30, 9:00, somewhere  
10 around there.

11 Q. And do you remember what time Franque and Keifer  
12 actually showed up at the station?

13 A. I think it was a while. I think it was 10:30 or  
14 11:00. We were waiting for them for a while. Actually, I  
15 think Special Agent Breen called them a couple of times to  
16 see where they were at, because we were waiting for them.

17 Q. So, did they eventually come?

18 A. Yes.

19 Q. What happened when they got there?

20 A. We put them in separate interview rooms, and then we  
21 interviewed them.

22 Q. And what did you do after -- were you able to gain  
23 useful information during that interview?

24 A. Yeah. Franque said that she had noticed the kids  
25 being super hypersexual. Jane Doe No. 1 would often touch

1 her genitals, try to put toys in her vagina, and try to --  
2 it looked like she was performing fellatio on toys and  
3 stuff. John Doe No. 1 was putting things in his rectum,  
4 or trying to. She noticed that Michael Blackburn was the  
5 primary caregiver, even when the parents were there.

6 she also said on the Saturday prior to us being  
7 there, that the Mitchells had left for California, and the  
8 kids had woken up around 8:30, the Mitchells left around  
9 9:00, and called her around 10:00 to talk to Michael. She  
10 said that when she went upstairs to go give Michael her  
11 phone, the door was locked when she would try to go in,  
12 because Michael shared a bedroom with the two kids. And  
13 she could hear John Doe No. 1 screaming and crying, no.  
14 She said it took a couple of minutes before Mr. Blackburn  
15 came to the door, and Jane Doe No. 1 was completely naked,  
16 and John Doe No. 1 only had a diaper on, I believe.

17 Q. So what did you do after you were done with the  
18 interview with Ms. Hatten and Mr. Orfield?

19 A. We spoke to Mr. Blackburn.

20 Q. Okay. Now, was that interview recorded?

21 A. Yes.

22 Q. Prior to coming here to testify today, did you have  
23 an opportunity to review that recording?

24 A. Yes.

25 Q. All right. We've already played a large portion of

1 the video here in court. In the interest of speeding  
2 things along, I'm just going to fast forward to the --  
3 well, I'll go over some of the preliminary things with  
4 you, but I'm not actually going to show you the interview,  
5 I'm just going to ask about the portions that you were  
6 involved in.

7 A. Okay.

8 Q. At the beginning of the interview, do you recall, or  
9 was the Defendant given a Miranda rights form?

10 A. He was.

11 Q. And did you observe him take the form?

12 A. Yes.

13 Q. What did you observe him do with the form?

14 A. He and Special Agent Breen went to the table where it  
15 appeared that he was reading it and signing the paper.

16 Q. All right. I'm showing you Government's Exhibit 28.  
17 Do you recognize that?

18 A. Yes.

19 Q. And you were there, you witnessed Mr. Blackburn sign  
20 this form?

21 A. Yes.

22 Q. Did you ask him if -- or, did he appear to have any  
23 trouble understanding what was going on at that point?

24 A. It didn't appear so.

25 Q. Did he ask you any questions?

1 A. No.

2 Q. All right. So after that, there's a portion of time  
3 where both you and Special Agent Breen are interviewing  
4 him; correct?

5 A. Yes.

6 Q. And then Special Agent Breen leaves and you go back  
7 in yourself; correct?

8 A. Yes.

9 Q. What was the purpose of going back in?

10 A. Well, we knew that the child exploitation would be  
11 Special Agent Breen's charges, but I had to get more  
12 details on the criminal sexual penetration of a minor and  
13 all the other State charges that I would be filing against  
14 Mr. Blackburn.

15 Q. Okay. So at the point when you go back into the room  
16 and it's just you and Michael Blackburn, did his demeanor  
17 change at all from when Special Agent Breen had also been  
18 in the room?

19 A. No.

20 Q. Did you ask him if he was okay?

21 A. I think so. I think I asked him a couple of times.  
22 He actually appeared to be relieved to be talking to us at  
23 a certain point, I think.

24 Q. What were some of the things that you discussed with  
25 the Defendant when it was just you interviewing him?

1 A. We discussed --

2 MS. KATZE: Objection, your Honor. Is she just  
3 going to question her, or are we going to see the video?  
4 It's the same objection I had before, so that we don't  
5 have to do it twice.

6 MS. LIZARRAGA: I was planning on not showing the  
7 video and just having her summarize.

8 THE COURT: That's fine.

9 A. We went over the pictures that we had of him sexually  
10 assaulting the two kids, and he was able to look at the  
11 pictures and ascertain through what the kids were wearing,  
12 or what they weren't wearing, or the background of the  
13 pictures, where they were at, when it happened, what he  
14 was doing, where everybody was at during each assault.

15 Not every assault. Not every picture was clear to  
16 him. But he was able to give him a large portion.

17 MS. KATZE: Your Honor, excuse me. Can I just,  
18 for the record, make a relevancy objection to this?

19 THE COURT: Sure. And I'll give you a standing  
20 objection.

21 MS. KATZE: Thank you.

22 BY MS. LIZARRAGA:

23 Q. What was the importance of getting that level of  
24 detail?

25 A. Because for State charges, we need a date and time

1 and what occurred and who was where, just for the State  
2 charges, for the specifics of the charges.

3 Q. Are you aware of whether or not the Defendant was  
4 given any bathroom or water breaks while he was there?

5 A. Yes, he was. And also, he was provided food.

6 Q. Okay. And so, do you remember approximately how long  
7 your interview with him lasted when Special Agent Breen  
8 was not in the room?

9 A. It was over an hour, I'm sure. I can't remember. I  
10 watched the whole thing, but I can't remember specifically  
11 how long mine was. But I was in there over an hour.

12 Q. Okay. And were you in and out of the room?

13 A. Yes.

14 Q. At some point in time, did you give the Defendant an  
15 opportunity to write something?

16 A. Yeah. I asked him if he wanted -- because he kept  
17 mentioning that he wanted to stop, he thought it was evil,  
18 and that he just didn't think he would have another  
19 opportunity ever again to do this. So I took that as he  
20 was feeling bad about it, so I offered him a chance to  
21 write an apology letter to the Mitchells for what he had  
22 done to the kids.

23 Q. And what was his response to that?

24 A. He at first didn't think it would work -- he didn't  
25 think it would be necessary. But then I gave him the

1 opportunity, I left pen and paper there, and he wrote an  
2 apology letter.

3 Q. I'm showing you what's been previously marked as  
4 Government's Exhibit 29. Do you recognize this?

5 A. Yes.

6 Q. What is it?

7 A. That's the apology letter that he wrote to Thomas and  
8 Maria Mitchell.

9 Q. Does Government's Exhibit 29 accurately reflect the  
10 apology letter that Michael Blackburn wrote on  
11 December 17, 2013?

12 A. Yes.

13 MS. LIZARRAGA: Your Honor, I move for the  
14 admission of Government's Exhibit 29.

15 MS. KATZE: Your Honor, I would object.  
16 Relevance.

17 THE COURT: All right. Objection noted, but  
18 overruled. It will be admitted.

19 (Government's Exhibit No. 29 admitted.)

20 BY MS. LIZARRAGA:

21 Q. Could you just go ahead and read for me -- well, I  
22 guess before that, let me ask this. Did you witness him  
23 actually -- were you in the room when he wrote this  
24 letter?

25 A. No.

1 Q. So was he by himself?

2 A. Yes.

3 Q. All right. Can you go ahead and read Government's  
4 Exhibit 29 for us?

5 A. "Dear Thomas and Maria. What I have done is  
6 unforgettable and was evil. I did not do anything to  
7 deserve" -- wait. Oh, "Ya'll did not do anything to  
8 deserve what I did. It was 'cuz of my evil ways that your  
9 children got hurt. I am deeply sorry that I put ya'll  
10 through all this pain and suffering, and hope that now  
11 that I am gone, you and your children will be safe and  
12 won't have to go through all this suffering again. Thank  
13 you, Michael, 12-17-13."

14 Q. Detective Sabaugh, in your training and experience,  
15 have you ever dealt with individuals who had a learning  
16 disability?

17 A. Yes. I have interviewed people that said they had a  
18 learning disability. I've never gotten, you know, them  
19 medically checked.

20 Q. When you were speaking to the Defendant during your  
21 interview, did it appear to you at all that he had any  
22 type of learning disability?

23 A. No. He was very articulate. He was able to explain  
24 to me different technology and websites that he was able  
25 to get onto. He corrected me when I said something wrong

1 or inaccurate. He was able to explain, which was great.

2 Q. Did you ever observe him multi-tasking throughout the  
3 interview?

4 A. I don't know if I gave him a chance to multi-task. I  
5 mean, he was able to look at the pictures, talk to me and  
6 describe what was going on, and how he came to the  
7 conclusion of where those pictures -- you know, where the  
8 assaults had happened during that time. That's probably  
9 the only time I remember him multi-tasking.

10 Q. Did he write on the pictures at all?

11 A. Yes, he did.

12 Q. And while he was writing on the pictures, were either  
13 you or Special Agent Breen speaking to him at the same  
14 time?

15 A. Oh, I'm sure, yes. Not on all occasions, but some.

16 Q. So when you were done with your portion of the  
17 interview, what happened after that?

18 A. That was it for that period of time. He was being  
19 arrested federally, so I didn't have any charging  
20 documents to do. Search warrants were being done at the  
21 residence, but I wasn't a part of those. I actually  
22 waited until Thomas and Maria got home from California,  
23 and it was like 9:00 P.M. before they got there, to  
24 interview them.

25 Q. At what point was the decision made that the case was

1 going to go Federal?

2 A. It was sometime during the interview. I don't really  
3 recall when it happened, because it wasn't part of my --  
4 you know, I was doing my thing, and I think it was Special  
5 Agent Breen that was speaking to you all to find out if it  
6 was going to be accepted or not.

7 Q. And with regard to any potential State charges, have  
8 you pursued any State charges against the Defendant?

9 A. Yes. Everything is pending at District Court right  
10 now.

11 Q. Okay. So what charges are pending?

12 A. Oh, we have numerous counts of criminal sexual  
13 penetration of a minor, criminal sexual contact with a  
14 minor, kidnapping, intimidation of a witness, child abuse,  
15 of course, and I think that's it. And there are numerous  
16 counts of each of those, not just one count.

17 MS. LIZARRAGA: Your Honor, may I have a moment?

18 THE COURT: Sure.

19 BY MS. LIZARRAGA:

20 Q. Just to clarify, with regard to the State charges,  
21 what exactly have you done? Have you submitted a charging  
22 document?

23 MS. KATZE: Objection. Irrelevant to the issue  
24 we have here.

25 THE COURT: well, part of it is, I may have --

1 how is it relevant?

2 MS. LIZARRAGA: I think -- well, the reason I was  
3 asking the question is because the Court had questioned  
4 Special Agent Breen about it.

5 THE COURT: And I was just trying to ascertain  
6 whether it was a Federal search warrant or a State search  
7 warrant. So that's how we got into that. And as it  
8 turned out, there were both.

9 And you made the point. There have been no --  
10 let's just clear this up once and for all. There's not a  
11 -- in other words, you've turned your investigation over  
12 to the State District Attorney's office; correct?

13 THE WITNESS: Yes, sir.

14 THE COURT: So at this point, that's probably all  
15 we need to get in. And I wasn't trying to -- like I said,  
16 I was just trying to --

17 MS. KATZE: I understand what you were asking,  
18 your Honor.

19 THE COURT: -- determine whether there was a  
20 Federal search warrant or a State search warrant.

21 MS. LIZARRAGA: I have no further questions.

22 THE COURT: Counsel may Cross.

23 CROSS-EXAMINATION

24 BY MS. KATZE:

25 Q. Good morning.

1 A. Good morning.

2 Q. Detective, you first became involved in the case, was  
3 it on December 13th, or did you say you did some of the  
4 surveillance before that?

5 A. I did try to canvas the apartment building with  
6 Special Agent Breen, but it was only one evening.

7 Q. Do you remember what the date of that was?

8 A. I don't, I'm sorry. I remember it had snowed.

9 Q. So Agent Breen contacted you?

10 A. Yes.

11 Q. And he told you that he had been contacted by the  
12 Cyber Crimes Center?

13 A. I don't remember who contacted him, but he advised  
14 that he had received a photo from another agency, or  
15 another department.

16 Q. And so he had already started the investigation?

17 A. I believe so.

18 Q. Then after you did some surveillance, he let you know  
19 that they had identified the girl in the photo?

20 A. Yes.

21 Q. What her name was?

22 A. Jane Doe No. 1.

23 Q. Right. And I think they had also identified who her  
24 parents were; right?

25 A. Yes.

1 Q. And as a result, they got the new address on Wyoming?

2 A. Correct.

3 Q. So he got all of that information?

4 A. He got all of that, yes.

5 Q. And then you mentioned also that he even went so far  
6 as to know that Thomas Mitchell, the father, had a  
7 brother, James, who initially maybe was a suspect?

8 A. Correct.

9 Q. So they had information on James; right?

10 A. Correct.

11 Q. Then on December 16th, that's when you guys had a  
12 meeting about how you were going to go to the house;  
13 right?

14 A. Correct.

15 Q. Was everybody, all the people that you named that  
16 ended up going to the house the next day, were they all  
17 present at the meeting?

18 A. No.

19 Q. So just some of the people?

20 A. It was the supervisors and me and Special Agent  
21 Breen, I believe. I think that was it.

22 Q. And then you all had recruited the other people to  
23 go. I know you had mentioned there were some Albuquerque  
24 Police.

25 A. It was the SPEED detail, the detail that I worked

1 with. I was housed over with APD at the time, so it was  
2 just natural. And at the time, Jeff Petersen with APD was  
3 essentially my supervisor, because I was housed over there  
4 with them.

5 Q. Okay. So he was one of the people who was there when  
6 you guys went on the 17th?

7 A. Yes.

8 Q. So, then you testified that on the morning of the  
9 17th, you all got together at another location, not  
10 right in front of the house?

11 A. Correct.

12 Q. And what time did you guys meet?

13 A. It was early. It was probably around 7:00 in the  
14 morning.

15 Q. So it was dark when you guys initially met? Because  
16 this is December 17th.

17 A. I don't remember it being dark, but I don't remember,  
18 to be honest with you. It could have been dark, but I  
19 don't remember.

20 Q. I understand. It's almost two years ago.

21 A. Exactly.

22 Q. So you were armed; right?

23 A. Yes.

24 Q. So you wear -- I'm trying to remember from the video.  
25 You wear a side --

1 A. A Glock, yes.

2 Q. A Glock on your --

3 A. On my right side.

4 Q. And as far as you knew, everybody else was armed?

5 A. Yes.

6 Q. How were people dressed? I know you said you had a  
7 jacket with your, I guess, BCSO insignia?

8 A. Yes.

9 Q. Were other people similarly dressed with jackets or  
10 vests that identified them as law enforcement?

11 A. Yes.

12 Q. Now, you all had made a plan the day before that you  
13 wanted to get to the house early; right?

14 A. Uh-huh.

15 Q. And that's why you were there at 7:15 in the morning;  
16 right?

17 A. Exactly.

18 Q. So you get to the house, and I guess you said you  
19 were sort of the first knocking on the door person?

20 A. Yes.

21 Q. And was it pretty obvious to you right away that the  
22 people in the house either were sleeping or had just woken  
23 up because you knocked on the door?

24 A. Yes.

25 Q. And you said that Michael Blackburn came to the door;

1 right?

2 A. Yes.

3 Q. On Direct Examination, you were asked if he gave you  
4 consent to enter.

5 A. Uh-huh.

6 Q. And you said that he did?

7 A. Yes.

8 Q. Can you tell me what you asked him? what did you ask  
9 him for consent for?

10 A. Normally, and I can't tell you exactly what I said,  
11 but I know that there wasn't an issue, so I know that this  
12 is what I normally say. And I've done probably a hundred  
13 welfare checks.

14 I usually say, my name is Theresa Sabaugh, I'm here  
15 to check on -- you know, are the Mitchells here? I  
16 remember I asked him that and he said they were out of  
17 town. And I said, who all lives here, and he said he did  
18 with the two children. And I asked -- well, usually I  
19 would say, may we come in, then. Can we come in, and we  
20 went inside. Not inside; we just stepped inside the door.

21 Q. Okay. So in this particular case, you filled out  
22 what you call your -- is it the case report?

23 A. Yes, ma'am.

24 Q. Is that --

25 A. It's a supplemental report.

1 Q. Supplemental report. And so that kind of -- that's a  
2 report where you write about the investigation, and what  
3 happened, and what you did; correct?

4 A. Yes.

5 Q. And so obviously you try to be as complete and  
6 accurate and thorough as you can be?

7 A. I try.

8 Q. My question is, there's nothing in that report about  
9 the fact that you asked for consent or were given consent.

10 A. Right.

11 Q. And yet later on, there's something in the report  
12 about that he gave consent to search a phone. So I'm  
13 wondering why if he did, in fact, give consent, why it  
14 wouldn't be in your report.

15 A. Well, because it wasn't an issue. Had he not given  
16 me consent, then I would remember it more and I would have  
17 documented that. Because it wasn't an issue and he was  
18 welcoming us inside, it wasn't an issue for me to write it  
19 in my report. And from now on, I will.

20 Q. You indicated that you told him that you were there  
21 for a welfare check, that you were concerned about the  
22 kids.

23 A. Yes.

24 Q. You had already seen these pictures that apparently  
25 were child pornography; right?

1 A. Yes.

2 Q. But at that point, you didn't tell him, we're  
3 investigating possible child pornography?

4 A. I was trying to ascertain who lived there, because if  
5 it was the Mitchells, I needed to talk to them. I didn't  
6 know -- we were a little thrown off that he answered the  
7 door, because we didn't expect him. We didn't know who he  
8 was. So that was a little -- I don't normally just tell  
9 everybody exactly everything. I said I was there for a  
10 welfare check.

11 Q. So when you were talking to him, he told you that  
12 there were two other adults staying there; right?

13 A. Yes.

14 Q. But you didn't see -- like when you guys were first  
15 talking at the door, you didn't see them?

16 A. No, I didn't.

17 Q. And when was it that you actually -- because they  
18 were sleeping in that back bedroom; right?

19 A. I think they were in the living room.

20 Q. I'm sorry; you're right, the living room. The room  
21 at the end of the hall.

22 A. The living room, yes.

23 Q. They were sleeping in there?

24 A. Yes.

25 Q. When did you first become aware of their actual

1 physical presence, not just that Michael told you there  
2 were two people?

3 A. It wasn't until later. I didn't know until later,  
4 because I didn't go back there.

5 Q. So in the time that you were at the door, or stepping  
6 inside the door, you never saw them, they didn't come down  
7 the hall?

8 A. No.

9 Q. Okay. So there were -- it sounds like there were at  
10 least seven or maybe eight law enforcement officers there?

11 A. There were a few. I don't remember how many. I'd  
12 have to -- do you want me to count in my head?

13 Q. That's all right. We've kind of already been through  
14 it. In addition to your supervisor, Petersen?

15 A. Petersen.

16 Q. So I think that makes it eight. So, eventually all  
17 law enforcement got in the house --

18 A. Yes.

19 Q. -- and were in different places. But you said -- so  
20 it sounds like the way you're explaining it, very quickly  
21 after you got inside the door is when the kids came down?

22 A. That's my recollection.

23 Q. And did both kids come down?

24 A. I believe so.

25 Q. Okay. And you said they were in diapers?

1 A. Yes.

2 Q. I mean, is it possible that they had just woken up?

3 A. Oh, yes.

4 Q. So maybe they were sleeping in their diapers?

5 A. Yes.

6 Q. And I think you said on Direct Examination, you

7 didn't have anything to do with the adults; right?

8 A. Not really, no. Not at the house.

9 Q. So at the house, you weren't in the living room with  
10 people, you had nothing to do with the other agents who  
11 were watching people; is that correct?

12 A. No, not really. Not any direct involvement.

13 Q. Okay. Let me just ask you about the condition of the  
14 kids. So, you said that they looked like maybe they  
15 hadn't been bathed in a while, their hair looked matted or  
16 something. Other than they maybe looked a little bit  
17 unkempt, did they look injured --

18 A. No.

19 Q. -- like from what you could initially see?

20 A. No.

21 Q. And this might not even be relevant, because they  
22 might have woken up with a dirty diaper, but I mean, were  
23 the diapers dirty?

24 A. I don't recall that.

25 Q. Okay. You said, we were upstairs looking for

1 clothes. who is we?

2 A. Well, it was a two-story, so at one point, and I  
3 couldn't tell you the specifics of this, at one point  
4 officers came in to do a security sweep of the residence,  
5 and I believe it was APD that was upstairs with me. I  
6 believe it was Jeff. I remember Jeff Petersen and, yeah,  
7 Josh Hawkes and Jake Storey were upstairs, I think, just  
8 making sure the other bedrooms were clear, I guess.  
9 That's what my understanding was.

10 Q. So you were upstairs with the kids, and you went into  
11 the bedroom where their clothes were at some point; right?

12 A. Yes.

13 Q. And that was Michael Blackburn's bedroom; right?

14 A. Yes.

15 Q. So when you were in there, I know on Direct you  
16 couldn't remember whether there were two little toddler  
17 beds or one, but there were toddler beds and there was  
18 Michael Blackburn's bed?

19 A. Yes.

20 Q. Would it be fair to say that you did not ask Michael  
21 Blackburn for permission to go up into that bedroom?

22 A. No, I did not.

23 Q. Now -- I'm sorry. Hold on one second.

24 Okay. So then it sounds like you said the next thing  
25 you remember is that you were transporting Mr. Blackburn

1 to the station.

2 A. After speaking on the phone. I was on the phone  
3 almost the entire time, yeah.

4 Q. I think you said it was probably around 8:30. So  
5 someone else was watching the kids?

6 A. Yes. I think actually, because APD was upstairs, I  
7 think once they started to try to find the kids' clothes,  
8 too, then I started getting on the phone. So I handed  
9 that off to them.

10 Q. Did you have anything to do with searching  
11 Mr. Blackburn?

12 A. No.

13 Q. And you didn't have anything to do with cuffing him?

14 A. I'm sorry; what? Cuffing him?

15 Q. Yes.

16 A. No.

17 Q. So once you got him down to the station, he was put  
18 in an interview room?

19 A. Yes.

20 Q. And it's a type of room where he can't get out --

21 A. Right.

22 Q. -- on his own? And so you guys left him there. You  
23 said you had to wait a while to interview Keifer and  
24 Franque, and then you went to interview him?

25 A. Yes.

1 Q. And I think from looking at the video, you started to  
2 interview him around 12:30; is that correct?

3 A. That's about the time, yeah.

4 Q. So it was about four hours from when you transported  
5 him?

6 A. Yes.

7 Q. Let me just ask you one question about your interview  
8 with Keifer.

9 A. Okay.

10 Q. You had indicated -- well, you had indicated that you  
11 did interview Keifer; right?

12 A. Yes.

13 Q. And Keifer specifically said to you that although he  
14 noticed the children's hypersexual behavior, he did not  
15 suspect abuse by Blackburn?

16 A. That's correct.

17 Q. Now going to the interview with Mr. Blackburn, it's  
18 you and Agent Breen going in at like 12:30?

19 A. Yes.

20 Q. And you still have your side arm on; right?

21 A. Yes.

22 Q. And Agent Breen hands the sheet that you were shown,  
23 the Statement of Rights?

24 A. Yes.

25 Q. He hands him that sheet. Did you actually ever see

1 that sheet?

2 A. Yes, I did. It's a part of my case file.

3 Q. Is it the same sheet that you use?

4 A. No, it's a little bit different. It has the same  
5 rights on it, of course, because they're Constitutional  
6 rights.

7 Q. But it's not the exact same form?

8 A. It's not the exact same form, no.

9 Q. Okay. So Agent Breen has the sheet, and these are  
10 what are typically referred to as Miranda warnings; right?

11 A. Yes.

12 Q. Let me ask you, you've been trained in Miranda  
13 warnings, right --

14 A. Yes.

15 Q. -- in the Miranda case? And so you understand the  
16 importance of those rights; correct?

17 A. Yes.

18 Q. I mean, you're advising a suspect of their  
19 Constitutional rights?

20 A. Correct.

21 Q. And you would agree those are important rights?

22 A. I agree.

23 Q. And it's important that an individual who is about to  
24 be interrogated understands those rights?

25 A. Exactly.

1 Q. Because they have the right to not speak to you at  
2 all, to remain silent; right?

3 A. Uh-huh.

4 Q. They have a right to consult with an attorney?

5 A. Right.

6 Q. And they have a right to stop talking after they  
7 start talking?

8 A. Yes.

9 Q. So Agent Breen didn't read these rights to  
10 Mr. Blackburn; right?

11 A. No.

12 Q. And you didn't read them to him, either; right?

13 A. No.

14 Q. Agent Breen just simply handed him this sheet of  
15 paper?

16 A. Yes.

17 Q. And at no time did Agent Breen ask about  
18 Mr. Blackburn's reading ability? Like he didn't ask him,  
19 can you read okay?

20 A. Not during the interview, no.

21 Q. And you didn't ask that, either?

22 A. No.

23 Q. So then after handing him this piece of paper, Agent  
24 Breen kept talking to him? Let me just show you a short  
25 clip.

1 A. I don't know.

2 Q. It's all right. Let me show you a very short clip.

3 MS. LIZARRAGA: Your Honor, at this point I would  
4 object. We've been over the clip. It's been admitted  
5 into evidence. The Court can fully assess what happened  
6 in the interview.

7 THE COURT: I'll tell you what, I'm going to let  
8 her do it, but then on Redirect if you want to expand on  
9 it, since she's using the video, I'll allow you to do, as  
10 well.

11 MS. KATZE: Thank you. This is just like a  
12 little two-minute piece.

13 (Video recording played)

14 BY MS. KATZE:

15 Q. Thanks for watching that. Now, when Agent Breen  
16 gives Mr. Blackburn the sheet with the Statement of  
17 Rights, Agent Breen is still talking to him?

18 A. Yes.

19 Q. And then you're talking to him?

20 A. Yes. I was explaining to him how important they  
21 were, that he understand them.

22 Q. But nobody actually explained any specific rights to  
23 him; is that correct?

24 A. Well, I did tell him that he didn't have to speak to  
25 us.

1 Q. Let me go back here. Okay, so he's handed the piece  
2 of paper, and there's not a time really when he has like a  
3 quiet time to look and read it; is that right?

4 A. It didn't appear that he needed it. He was reading  
5 it. It looked like he was reading it.

6 Q. I guess that's a question for what he's doing. To  
7 me, it looks like he's looking at Agent Breen and looking  
8 at you.

9 A. I thought he was looking at the piece of paper and  
10 reading it.

11 Q. So I understand that you thought he read the rights,  
12 but you didn't ask him if he read them, did you?

13 A. I wasn't -- it appeared he was reading them when I  
14 was in there. Like I didn't ask him, no, specifically.

15 Q. Right, you didn't ask him, and Agent Breen didn't ask  
16 him if he had actually read them?

17 A. No.

18 Q. And Agent Breen didn't ask if he actually understood  
19 the rights?

20 A. I don't think he ever asked him that. He did say  
21 that we have to make sure that you are advised of them and  
22 that you understand them. He did say that in the  
23 beginning.

24 Q. But nobody actually asked him, do you understand  
25 these rights?

1 A. No, I didn't.

2 Q. Neither Agent Breen nor you specifically asked him if  
3 he wanted to speak to an attorney?

4 A. No.

5 Q. And neither of you actually asked him if he wanted to  
6 waive those rights?

7 A. Actually, Agent Breen did say, in the back there it  
8 says, this says down here that if you're willing to talk  
9 to us, you have to sign right here.

10 Q. But Agent Breen never actually asked him if he wanted  
11 to waive the rights that are on the form? He doesn't  
12 specifically ask him that?

13 A. Agent Breen was advising him of his rights, and I  
14 think that that's just his way of doing it. But he did  
15 say, this says right here that you're willing to talk to  
16 us, or whatever he said at the end there.

17 Q. Well, but initially he simply just -- he doesn't go  
18 through any of the rights, he just says, initial here;  
19 right? Is that what we just saw in the video?

20 A. But you're asking me specifically if he was asked  
21 about waiving rights, and he does say, this down here  
22 says, you know, you're willing to talk to us, initial and  
23 sign. Doesn't he say that? I mean, didn't I --

24 Q. Well, the Court has the video, so that's fine.

25 MS. KATZE: May I have a moment, your Honor?

1 THE COURT: Sure.

2 BY MS. KATZE:

3 Q. Just one last question. You had testified that you  
4 thought the Miranda warnings are very important and that  
5 they cover very important Constitutional rights. Why is  
6 it that you and Agent Breen didn't give him some time to  
7 just read them?

8 A. He looked like he had read them. He looked like he  
9 was reading them when we were talking to him. It's not  
10 our policy to leave somebody in the room with -- I mean,  
11 it's not my policy. I'm not going to speak for Agent  
12 Breen. I don't normally leave somebody in the room with  
13 their advisory rights.

14 Q. What about just not talking to them while they're  
15 looking at it?

16 A. It would be fair to say that I do things a little  
17 differently, but he was advised his rights with a piece of  
18 paper, and we believed him -- he didn't ask any questions,  
19 he didn't seem to misunderstand anything. So I think that  
20 he understood his rights.

21 Q. But I guess my question is, given that they're so  
22 important, was there a reason why you talked while he was  
23 looking at it?

24 MS. LIZARRAGA: Objection.

25 A. I was --

1 THE COURT: Just a second. What's the objection?

2 MS. LIZARRAGA: I think this has been asked and  
3 answered.

4 THE COURT: I'll let her answer this question,  
5 and then let's --

6 A. While I was speaking to him, I was telling him how  
7 important it is for him to understand them, and that he  
8 doesn't have to talk to us without an attorney. Or maybe  
9 I didn't say without an attorney, but I said that he  
10 doesn't have to talk to us. So I was trying to explain to  
11 him his rights while he was reading them.

12 I did not -- Agent Breen had a different tactic and I  
13 didn't want to walk on his toes during that, but I was  
14 trying to explain to him his rights during that, that  
15 period of talking to him. It wasn't just me babbling on.

16 MS. KATZE: Thank you.

17 THE COURT: Why don't we do this. It's almost  
18 noon. Do you want to break for lunch? Or, how much  
19 Redirect do you have?

20 MS. LIZARRAGA: I think it will only take me ten  
21 minutes.

22 THE COURT: That's fine. Let's go ahead and  
23 finish with this witness.

24 MS. LIZARRAGA: Thank you, your Honor. And this  
25 is our last witness.

1 REDIRECT EXAMINATION

2 BY MS. LIZARRAGA:

3 Q. Detective Sabaugh, on Cross-Examination, Ms. Katze  
4 asked you whether or not you observed anyone in the hall  
5 when you came into the house. I'm showing you what's been  
6 admitted as Government's Exhibit 5. Is this -- what are  
7 we looking at here?

8 A. That's down the hall. I think the kitchen is to the  
9 left there.

10 Q. And when you first walked into the house, where was  
11 your attention on?

12 A. Mr. Blackburn in the foyer.

13 Q. And other than it being on Mr. Blackburn?

14 A. The children.

15 Q. Okay. So were you actually looking back to the back  
16 of the hall to see if anyone was there?

17 A. No. My attention was to Mr. Blackburn, because he  
18 was the immediate person I was speaking to, and then when  
19 the children came down and I recognized Jane Doe No. 1,  
20 then my attention went there and Agent Breen stayed with  
21 Blackburn, I believe.

22 Q. So is it possible that someone in that living room  
23 could have come into the hall during that point?

24 A. Oh, yeah, they could have. Other agents and people  
25 had gone in there, too, into the residence. So I wasn't

1 concerned.

2 Q. And Detective Sabaugh, on Cross-Examination Ms. Katze  
3 asked you about the children's room. Do you remember  
4 that?

5 A. Yes.

6 Q. At the point that you went upstairs with the children  
7 and went into their room, were you aware that that was  
8 Michael Blackburn's room, as well?

9 A. No.

10 Q. On Cross-Examination, Ms. Katze went over the whole  
11 advisement of rights portion with you and Special Agent  
12 Breen. At any point in time, did the Defendant tell you  
13 that he couldn't read?

14 A. No.

15 Q. Did he tell you that he needed more time?

16 A. No.

17 Q. At any point in time throughout the interview, if he  
18 had trouble understanding something, did he tell you that?

19 A. Yes.

20 Q. Did he ever correct you throughout the interview?

21 A. Yes.

22 Q. Can you remember, like, maybe how many times that  
23 happened later on?

24 A. Oh, it was a few times, because if I had said  
25 something about him insulting one of the kids or whatever,

1 or if it was at a different residence, like I thought it  
2 was in a different apartment than where it happened, he  
3 corrected me. There were a couple of times that I can  
4 think of.

5 Q. Was there ever a point in time when you asked him a  
6 question and he told you, he said, oh, I need a second to  
7 think about this?

8 A. No.

9 Q. Okay. But -- with regard to the advisement of  
10 rights?

11 A. No.

12 Q. Okay. Now, when Special Agent Breen handed him the  
13 paper, you were actually physically in the room with him?

14 A. Yes.

15 Q. Were you able to observe him?

16 A. Yes.

17 Q. Were you able to observe him face on?

18 A. Yes.

19 Q. And what did he appear to be doing with the  
20 advisement form?

21 A. He looked like he was reading it.

22 Q. Did you have any reason to believe that he didn't  
23 understand what was on that form?

24 A. No. And if I did, I would have clarified.

25 MS. LIZARRAGA: Your Honor, I have no further

1 questions.

2 THE COURT: I've got a couple. And you covered  
3 this, but just so I'm clear on it, you got involved in  
4 this -- in other words, initially Agent Breen was involved  
5 based on a picture or a photograph that appeared to be  
6 child pornography?

7 THE WITNESS: Yes, sir.

8 THE COURT: And because in one of those photos,  
9 also, it appeared that there was some form of criminal  
10 sexual contact of a child, then you or your agency was  
11 called into the investigation; is that right?

12 THE WITNESS: Yeah. We all work together, so  
13 that was part of the detail. And maybe I should have  
14 clarified a little bit better, but my role in SPEED for  
15 the most part was not the exploitation part so much, it  
16 was the hands-on offenses, that I would take over any kind  
17 of alleged hands-on offense.

18 THE COURT: So in other words, a protocol is set  
19 up where if it's, as you say, a hands-on --

20 THE WITNESS: I was kind of the person they  
21 called for any hands-on offenses, because I was from SVU  
22 and I did most of those cases.

23 THE COURT: If it's purely a photograph of child  
24 pornography, then --

25 THE WITNESS: It would have stayed with -- it

1 probably would have just stayed with Special Agent Breen.  
2 But he was looking for manpower, basically, to do a  
3 canvas. It wasn't even at the time -- you know, it was  
4 just, we're going to go try to find these people. It was  
5 more about resources, just to canvas, in the very  
6 beginning.

7 THE COURT: Okay.

8 THE WITNESS: I was just helping out.

9 THE COURT: Now, I've heard testimony from some  
10 of the agents, and they used the term knock and talk. Is  
11 that a term that you use?

12 In other words, what I'm getting at is, like  
13 knock on the door and talk to the residents, is that the  
14 same, in your mind, as a welfare check on the children?  
15 And I realize some agencies have their own terminology and  
16 their own culture, so to speak.

17 THE WITNESS: I think that's what it is. I think  
18 that this was a knock and talk, probably, to them. To me,  
19 it was a welfare check of a child where, yes, I did knock  
20 on the door and I did talk to people. But a knock and  
21 talk -- I'm relating it to my drug days. It's just a  
22 little different for me, I think. But it's essentially  
23 the same, I guess.

24 For me it was a welfare check of a child. I  
25 guess it was a knock and talk, essentially, if that's what

1 they called it. But it was a welfare check for us.

2 THE COURT: So in terms of describing what  
3 initially you did in going to the residence at Wyoming,  
4 you would characterize that as a welfare check of the  
5 children?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. Now, I believe Ms. Lizarraga  
8 showed you copies of some statutes. Based on your  
9 training and experience and your protocols, if you're  
10 doing a welfare check of the children and you knock on a  
11 residence and you say, we're here to do a welfare check,  
12 and if the occupants do not allow you to come in and see  
13 the children, then based on your training and experience,  
14 what are you allowed to do?

15 THE WITNESS: We're allowed to arrest them for  
16 obstructing us from a criminal investigation of a child,  
17 or abuse of a child. It's an obstruction of a child abuse  
18 investigation.

19 THE COURT: So your understanding of your  
20 protocols are that if you're not allowed to actually see  
21 the children, and you believe they're in the residence,  
22 then you have the ability to go ahead without going to get  
23 a warrant and basically determine if the children are  
24 okay?

25 THE WITNESS: Yes.

1 THE COURT: Okay.

2 THE WITNESS: Yes.

3 THE COURT: So again, that day in December when  
4 you had the initial encounter with the Defendant,  
5 Mr. Blackburn, at the time that you knocked on the door  
6 and he answered, if you were not allowed in, then what  
7 would have been your next step?

8 THE WITNESS: There would have been a little bit  
9 more escalation. It would have been, hey, we're coming in  
10 -- well, I hate to speculate on what would have happened.  
11 There are so many ways, you know, I could have conducted  
12 it.

13 If he wouldn't have let us in, he would have been  
14 brought out of the residence, and then we would have gone  
15 inside to make sure that the children were okay.

16 THE COURT: And then at that point, if the  
17 children are okay, then in terms of your protocol, what's  
18 the next step? Does it end there?

19 THE WITNESS: Well, I would have talked to  
20 Mr. Blackburn. What normally would happen is -- what I  
21 would speculate would have happened, if we're playing the  
22 what-if game, if he didn't let us in, he would have been  
23 brought outside the residence and I would have talked to  
24 him. Like, hey, who else is in there, we need to know,  
25 and he would have told us, the kids. So we would have

1 gone to check on the kids. And then I would have talked  
2 to him. Like, where are their parents, blah blah blah.

3 The result probably would have been the same. He  
4 would have come downtown, because we identified Jane  
5 Doe No. 1 right away. And then CYFD would have been  
6 called. Everything would have been the same, probably,  
7 after that.

8 THE COURT: And it's normal -- any time you're  
9 doing a welfare check, if you suspect there's something  
10 going on with the children, is it customary to then notify  
11 Children, Youth and Families to come in?

12 THE WITNESS: Yes, sir, especially since the  
13 parents were not in the state. And at the time, we didn't  
14 have any reason to believe that the parents knew about the  
15 abuse or anything like that. So had they been there, we  
16 would have been able to interview them, and things may  
17 have been different, too.

18 But because there was no caretaker for the  
19 children, because we were taking Michael Blackburn, we  
20 would have called. Plus, just because of the photos, I  
21 mean, it would have been a CYFD referral anyway, because  
22 of what was happening. It would have happened anyway,  
23 regardless.

24 THE COURT: Okay. Now, do you have any  
25 questions, Ms. Katze, in light of mine?

1 MS. KATZE: No.

2 MS. LIZARRAGA: No follow-up, your Honor.

3 THE COURT: Okay. May the witness be excused?

4 MS. LIZARRAGA: Yes, your Honor.

5 THE COURT: All right. Thank you.

6 THE WITNESS: Thank you, your Honor.

7 THE COURT: All right. So you have no further  
8 witness evidence; right?

9 MS. LIZARRAGA: That's correct, your Honor.

10 THE COURT: And Ms. Katze, did you have any  
11 further evidence you wanted to --

12 MS. KATZE: I do not.

13 THE COURT: Okay. Then it's noontime. Why don't  
14 we come back at 1:30 and have argument.

15 MS. KATZE: I actually do have one thing. I want  
16 to give the Court and the Government -- I think it's an  
17 important article about a research that was done about  
18 Miranda. So if I could just put this in the record. It's  
19 a research that was done on Miranda warnings.

20 And then, your Honor, the second thing I'd ask,  
21 rather than coming back this afternoon and doing  
22 arguments, I would ask if you would give us time to do  
23 written briefing on the issue, especially because it seems  
24 to me that at least from the last witness, it seems that  
25 the Government is bringing up a new theory of entry into

1 the house that they did not bring up in their response.

2 All the other agents indicated that the entry of  
3 the house was a knock and talk, it was voluntary. It  
4 seems that the last agent, if I understand it, it seems  
5 like she's basically saying it's a welfare check, and  
6 she's going to get in the house.

7 But for the whole hearing, what I would ask for  
8 is, if you could give us, I don't know, like a week to  
9 order the transcript, and then maybe two weeks after that,  
10 we could simultaneously file like a closing and legal  
11 argument for the Court, rather than --

12 THE COURT: I don't have a problem doing that,  
13 but I would like to explore some issues with you all, just  
14 because it's fresh in my mind.

15 MS. KATZE: Okay. I mean, I don't have a problem  
16 talking about it. I just don't want to be in a position  
17 where --

18 THE COURT: And that's one of the issues I want  
19 to -- and I don't know. In other words, I heard the  
20 Federal agents say, in terms of the knock and talk, that  
21 if someone doesn't want to talk, then that's it.

22 MS. KATZE: Right.

23 THE COURT: But I heard something that I wasn't  
24 aware of in terms of those State statutes, so I think  
25 that's --

1 MS. KATZE: The same with me.

2 THE COURT: Right. So certainly I'll allow some  
3 additional briefing on that, but there are some other  
4 areas I wanted to visit with you all about.

5 But, yes, that way if you want to order the  
6 transcript and do some supplemental briefing -- there are  
7 some important issues that have to be resolved, so I want  
8 to make sure everybody has time to make the record and  
9 make the arguments they wish.

10 All right. So we'll resume at 1:30.

11 (Recess was held from 12:01 until 1:35 P.M.)

12 THE COURT: Shall we start with the United States  
13 first?

14 MS. KATZE: Your Honor, before we start, I had  
15 given the Court and the Government this Miranda article,  
16 and I think I should enter it into evidence. So, I just  
17 want to enter it into evidence, and it's A for the  
18 defense.

19 THE COURT: Any objection?

20 MS. LIZARRAGA: No objection, your Honor.

21 THE COURT: All right, it will be Defendant's  
22 Exhibit A.

23 (Defendant's Exhibit No. A admitted.)

24 THE COURT: All right, I'm ready. And what I'd  
25 like to do, if I could -- I mean, you're welcome to

1 follow-up, but I've got some specific areas of inquiry  
2 that I'd like to just start with.

3 Let's start with the knock and talk. Now, I  
4 understand that the Federal agents' testimony was that on  
5 a knock and talk, if there's not consent, then they don't  
6 enter.

7 MS. LIZARRAGA: Correct.

8 THE COURT: Now, the last -- and this was  
9 Detective Sabaugh, but are you relying on, aside from the  
10 knock and talk and it's the position that there was  
11 consent by Mr. Blackburn for the agents to enter and to  
12 initially talk, are you also relying on those State  
13 statutes that you questioned Detective Sabaugh about?

14 MS. LIZARRAGA: Well, your Honor, our position is  
15 that there absolutely was consent.

16 THE COURT: Right, I understand. But in other  
17 words, that gets me to why are you asking --

18 MS. LIZARRAGA: Right. I brought up the  
19 New Mexico State statute because even though the Federal  
20 agents would not have had authority to enter the house had  
21 Mr. Blackburn not given consent, I do believe that under  
22 the State laws of New Mexico, Detective Sabaugh would  
23 have.

24 So if for whatever reason the Court feels that  
25 our evidence pertaining to the Defendant's consent is not

1 entirely clear, then we would also rely on those State  
2 statutes, which would have enabled Detective Sabaugh to go  
3 into the home to check on the welfare of the children.

4 THE COURT: But under those State statutes, what  
5 -- in other words, let's say she could go into the home  
6 and check on the children. She would have seen that the  
7 children are there. In other words, what then under that  
8 statute would be allowed?

9 MS. LIZARRAGA: Well, I think that the statute  
10 would have allowed her to push Mr. Blackburn aside,  
11 because no one is allowed to obstruct law enforcement when  
12 they're doing that type of check. As soon as they see the  
13 children, she said that she immediately made the  
14 connection that the minor female, Jane Doe No. 1, was the  
15 actual minor female that was depicted in, I believe  
16 Government's Exhibit 48, and so at that point, I think  
17 that the State has the authority to call out CYFD.

18 THE COURT: And take the children into custody?

19 MS. LIZARRAGA: Yes.

20 THE COURT: Now, I'm assuming you would take the  
21 position that they would be allowed to do a protective  
22 sweep of the house?

23 MS. LIZARRAGA: Yes, your Honor.

24 THE COURT: Okay. But aside from that point and  
25 then contacting CYFD to take the children into protective

1 custody, would they be allowed to do anything else absent  
2 obtaining a search warrant?

3 MS. LIZARRAGA: I think that they would be  
4 allowed to secure the premises while they obtained a  
5 search warrant. I think at that point, they definitely  
6 have probable cause to believe that there is evidence in  
7 that home related to either a State offense or a Federal  
8 offense. So I think that they would have been allowed to  
9 do a sweep, a protective sweep, and then secure the home  
10 to make sure that there was no destruction of evidence in  
11 that house.

12 THE COURT: Now, getting back to the knock and  
13 talk, you're relying on Agent Breen's testimony, as well  
14 as Detective Sabaugh's testimony, that there was consent  
15 by Mr. Blackburn for the officers to enter, as well as the  
16 other occupant. I'm drawing a blank on his name.

17 MS. LIZARRAGA: Yes. Keifer Orfield also  
18 testified that he heard the agents ask for permission to  
19 come in, and he heard Mr. Blackburn say that they could.

20 I believe that Special Agent Altamirano also  
21 testified that she was standing right outside the door and  
22 that she heard Detective Sabaugh ask for consent, and that  
23 she heard the Defendant give consent.

24 THE COURT: Okay. In terms of evidence in  
25 support of the consent for the agents to enter, is there

1 anything else you wish to call to my attention on that  
2 kind of initial issue?

3 MS. LIZARRAGA: I think just the testimony of our  
4 witnesses saying that they did ask for consent, and that  
5 the Defendant did agree to give consent. I believe that  
6 four of the five witnesses we called were all consistent,  
7 that that is exactly what happened, including a nonlaw  
8 enforcement person who was in the house.

9 THE COURT: Now, where does it leave, from your  
10 analysis, once the young female child comes down the steps  
11 and there's the testimony that she is the one depicted in  
12 Photographs 48 and 49, then at that point, where are we?

13 MS. LIZARRAGA: I think that factually what  
14 happened is that at that point, the officers were in the  
15 house because they had agreed to be let in. So while  
16 they're in the house, and as long as the occupants are  
17 fine with them being in the house, I think that they're  
18 fine doing exactly what they did.

19 I think that that's further bolstered by the fact  
20 that we heard testimony that each of the agents who  
21 entered the house were aware of the investigation prior to  
22 going in, and once they got there, they all immediately  
23 began to suspect Michael Blackburn of being the offender.  
24 So I think everything that happened was well within the  
25 bounds of the law.

1 I think they were trying to figure out what to do  
2 with the kids, they're trying to coordinate with CYFD,  
3 they're trying to make sure that there's no destruction of  
4 evidence. I don't think that there was -- or, there's no  
5 testimony that any actual search of the house happened  
6 prior to them obtaining a warrant. I guess the only other  
7 issue would be with regard to the Defendant's cellphone.

8 THE COURT: Yes, and that was the next thing.  
9 Now, I suspect Ms. Katze will say that Agent Altamirano  
10 conducted a search to obtain the phone, a search of the  
11 house.

12 MS. LIZARRAGA: Sure, and I think that that goes  
13 directly against the evidence that we heard. What she  
14 said is that Ms. Hatten brought to her attention that she  
15 believed that Mr. Blackburn was sexually abusing the  
16 children, that he did have a cellphone, and that she would  
17 show her where it is.

18 Hypothetically, even if Ms. Hatten hadn't taken  
19 Agent Altamirano to get the phone, I think at that point  
20 the agent would still be acting well within the legal  
21 bounds to get the phone to ensure that there is no  
22 destruction of evidence. You heard that there was no  
23 actual search of the phone until the Defendant consented  
24 to it.

25 So at the point that Agent Altamirano followed

1 Ms. Hatten upstairs, she testified that she had just  
2 received information that Ms. Hatten suspected the  
3 Defendant of sexually abusing the children. She knew that  
4 the previous pictures that she had seen, Government's  
5 Exhibits 48 and 49, were taken with a cellphone, so she  
6 had every reason to believe that there may be additional  
7 evidence on that cellphone, and I think law enforcement is  
8 perfectly justified in maintaining evidence.

9           There was no search of the phone. I think that  
10 you can secure evidence to ensure that there is no  
11 destruction of it while you are either obtaining -- you  
12 can maintain the evidence, and then if you get consent,  
13 obviously you can go into the phone, or you can wait until  
14 you get a search warrant to actually go into the phone.

15           THE COURT: Now, who was the other federal agent?  
16 His first name is Morjn.

17           MS. LIZARRAGA: Morjn Langer.

18           THE COURT: Agent Langer. Now, I understand the  
19 Government's position to be that Agent Altamirano, if you  
20 will, secured the phone and took it downstairs. From the  
21 Government's standpoint, is there anything wrong with  
22 Agent Langer asking the Defendant if that was his phone?

23           MS. LIZARRAGA: Absolutely not. I think that at  
24 that point, he's trying to identify whether or not that's  
25 his phone. I think that courts have found that when

1 you're asking for consent to search something, that  
2 doesn't trigger any type of Miranda warning that's  
3 necessary.

4 So simply identifying objects that belong to the  
5 Defendant versus the other occupants in the house -- he's  
6 simply asking the Defendant, is this your phone. The  
7 Defendant said, yes, it is. And then he asked for consent  
8 to search.

9 THE COURT: Miranda speaks to custodial  
10 interrogation. At what point was the Defendant in custody  
11 that would trigger Miranda?

12 MS. LIZARRAGA: I believe that he was in custody  
13 as soon as handcuffs were placed on him.

14 THE COURT: Now, Agent -- I don't know why I  
15 can't --

16 MS. LIZARRAGA: Langer.

17 THE COURT: Langer, yes. He testified that after  
18 asking the Defendant if that was his phone, he then asked  
19 the Defendant if he could search the phone, and Agent  
20 Langer testified that there was voluntary consent given by  
21 the Defendant for Agent Langer to examine or look through  
22 the phone.

23 MS. LIZARRAGA: Yes.

24 THE COURT: And then, am I correct in assuming  
25 that from the Government's perspective, that verbal

1 consent would have been sufficient in and of itself for  
2 Agent Langer to search the contents, or look for  
3 photographs on the phone?

4 MS. LIZARRAGA: Yes.

5 THE COURT: Now, Agent Langer also testified that  
6 he got a consent form, filled it out, verbally explained  
7 it to him, and then had the Defendant read and sign. Is  
8 that a fair summation?

9 MS. LIZARRAGA: Yes, your Honor.

10 THE COURT: Is there anything else that you wish  
11 to add regarding the search of the phone that I've  
12 overlooked?

13 MS. LIZARRAGA: No, your Honor. I would just  
14 point out that what courts look at in order for consent to  
15 be valid are a number of different circumstances, whether  
16 or not there's any coercion. I think that all of our  
17 witnesses testified that the Defendant's demeanor was  
18 cooperative throughout. We heard from Keifer Orfield that  
19 he felt that the police were being extremely nice. I  
20 think at some point, he even said he felt like he was  
21 talking to his friends. So I think all of the evidence  
22 clearly established that there was no coercion by police  
23 at all in obtaining that consent.

24 THE COURT: Okay. So now we get to the point  
25 about the confession, and I'll let you proceed on that.

1 MS. LIZARRAGA: All right. Thank you, your  
2 Honor. The Court did have several opportunities to  
3 observe the video. The Court heard from both Detective  
4 Sabaugh and Special Agent Breen who were there. I believe  
5 that there is no doubt that the Defendant was given the  
6 form and that the Defendant signed the form.

7 So I think that the only issue for the Court to  
8 decide is whether or not the Defendant knowingly knew his  
9 rights and waived them. I believe with the evidence in  
10 this case, we've met our burden of preponderance by  
11 establishing that he did, in fact, do that.

12 You can see in the video that he is looking down  
13 at the form. We heard from both Detective Sabaugh and  
14 Special Agent Ryan Breen, who were actually in the room  
15 with him at that time, that they observed him reading the  
16 form. The Defendant did not have any questions for them.  
17 He never told them, oh, I don't know how to read; I need  
18 more time; I don't know what any of this means.

19 And I would point out that later on in the  
20 interview with Defendant, there are portions where he does  
21 correct Detective Sabaugh if she's gotten something  
22 incorrect. He does ask for time to think about something.  
23 He tells the agents that, you know, he wants to make sure  
24 he's getting it right.

25 So I think that part of the reason why courts

1 look to the totality of the circumstances is because all  
2 of that dictates what the Defendant's level of  
3 understanding was at the time.

4 Now, we did hear from Ms. Abeles about the  
5 Defendant's reading comprehension. I would simply point  
6 out to the Court that she was never actually qualified as  
7 an expert. I know she rendered some opinions.

8 THE COURT: You didn't object, though.

9 MS. LIZARRAGA: That's correct. I mean, I wanted  
10 her to be able to get out her testimony, but with regard  
11 to the weight to give what she said, she met with the  
12 Defendant for a total of three-and-a-half hours, and she  
13 then reviewed a video of the Defendant that had occurred  
14 two years prior. She didn't appear to realize that when I  
15 was questioning her about it on cross-examination.

16 THE COURT: What's the significance of the two  
17 year time lapse?

18 MS. LIZARRAGA: Well, I believe that when I was  
19 cross-examining her and questioning her about the  
20 Defendant's abilities, what she testified to is that she  
21 could only speak to what his abilities were the day that  
22 she actually examined him. So I would just point that  
23 out. And I also would point out that she did administer  
24 to the Defendant a test which is specifically supposed to  
25 be only for individuals up to 25 years old.

1 I would also point out that the only thing that  
2 she relied on was the Defendant's own self-reporting  
3 during the test. The Defendant clearly understands that  
4 he's in a hot spot. I think he has every incentive to do  
5 poorly on that test. And I think that's something that  
6 the Court should consider in weighing both the results of  
7 any testing that she conducted, and in weighing her  
8 opinions about whether or not he would have had sufficient  
9 time to read.

10 I'd also note that she was only provided with a  
11 two-minute clip. She did not review the entire video.  
12 She did not review portions of the video where the  
13 Defendant is clearly multi-tasking. He's writing on  
14 documents, listening to agents as they're talking to him,  
15 responding to them. So our position is that he definitely  
16 understood what his rights were and voluntarily agreed to  
17 waive them.

18 THE COURT: You asked her some questions in cross  
19 basically alluding -- I don't remember if she first raised  
20 it, or maybe you asked it, but a full-blown diagnostic  
21 evaluation versus what she was tasked to do. What if any  
22 significance do you attribute to that?

23 MS. LIZARRAGA: Well, I think that her -- she  
24 simply gave him tests, and I think that, basically, if you  
25 follow the procedures that were laid out by AHEAD that I

1 pointed out, and I'm happy to supplement the record with  
2 that portion of what I was referring to on cross,  
3 individuals in this profession tell you that you cannot  
4 rely solely on these tests in order to be able to  
5 accurately determine whether or not someone has a learning  
6 disability and what their true level of reading  
7 comprehension is.

8           So I think basically what happened here is, she  
9 gave him the test, but she didn't do a diagnostic  
10 interview, she didn't ask for any records pertaining to  
11 his academic background, she didn't interview him about  
12 his family history. And those are all steps that have  
13 been deemed important in order to fully be able to assess  
14 whether or not an individual has a learning disability.

15           THE COURT: Okay. Any additional argument you  
16 wish to make?

17           MS. LIZARRAGA: The only additional argument that  
18 I wish to make is, our position is absolutely that the  
19 Defendant was adequately advised of his Miranda rights,  
20 and that he knowingly waived them.

21           If for whatever reason the Court does find a  
22 deficiency with Miranda, then I think that the remedy is  
23 to exclude the Defendant's confession. I think anything  
24 that we learned during the confession is still fair game.  
25 what courts say is, even if there is a violation of

1 Miranda, as long as there was no coercion, you can still  
2 use evidence that you found out throughout the interview  
3 later on.

4           So say, for example, that the Defendant told  
5 Special Agent Breen and Detective Sabaugh about his e-mail  
6 accounts during the interview. As a result of that, we  
7 went and got search warrants for his e-mail accounts, and  
8 what we found on his e-mail accounts forms the basis of  
9 our distribution and receipt counts. And so our position  
10 would be that, you know, we would still be able to move  
11 forward with the evidence in our case, and that there is  
12 no fruit of the poisonous tree remedy for a Miranda  
13 violation.

14           THE COURT: Yes, I thank you for that. I forgot,  
15 there was one other area that I wished to explore with  
16 you.

17           If a determination was made that there was not a  
18 knowing and intelligent waiver of Miranda prior to the  
19 confession, and I can't remember if you cited the cases  
20 you're relying on, but since, as you said, there was no  
21 coercion, then the officers would be able -- although the  
22 remedy would be the confession would be excluded, say, at  
23 a trial, what the agents learned from the interview that  
24 led to other evidence would not exclude that evidence.

25           MS. LIZARRAGA: That's correct, your Honor.

1 THE COURT: And did you cite your authorities for  
2 that?

3 MS. LIZARRAGA: I don't think I have orally to  
4 the Court. It's found on Page 20 of my brief.

5 THE COURT: That's fine, as long as it's in your  
6 brief.

7 MS. LIZARRAGA: Yes, I have those cites to 10th  
8 Circuit law, as well as United States Supreme Court law,  
9 on Page 20 of Document 33.

10 THE COURT: Okay. All right, thank you.

11 MS. LIZARRAGA: Thank you very much.

12 THE COURT: Ms. Katze, let me ask, as I  
13 understood at least the tone of your pleadings, there were  
14 in effect two Constitutional violations that you were  
15 focusing on. One obviously is the Miranda, the question  
16 of whether the Miranda warnings were adequate prior to the  
17 confession. And then, also, the initial entry to the  
18 apartment.

19 MS. KATZE: Yes. The Fourth Amendment and the  
20 Fifth Amendment.

21 THE COURT: Right. Are there any other  
22 Constitutional violations that you are --

23 MS. KATZE: In order to give you a thorough  
24 answer, I'll review the record, but I know that initially  
25 from the information that we had and how we proceeded in

1 the hearing, yes, the Fourth Amendment violation, given  
2 the entry and the subsequent search in the home, and the  
3 Fifth Amendment violation of the Miranda.

4 THE COURT: So I guess the point about the --  
5 you're talking about basically the phone when you say the  
6 subsequent search of the home?

7 MS. KATZE: Yes, going up into the bedroom and  
8 getting his phone out of his bedroom without consent.

9 THE COURT: All right. Under your analysis, if  
10 there was not proper consent given for the initial entry,  
11 then are you claiming that's a fruit of the poisonous  
12 tree?

13 MS. KATZE: Yes. Yes, if there's an illegal  
14 entry, anything you get as a result of the illegal entry  
15 would be a fruit of the poisonous tree.

16 Additionally, even if their entry into the home  
17 is found legal, Altamirano's seizure of the phone is  
18 illegal. It's still a seizure without consent.

19 THE COURT: All right. That was something I  
20 wanted to explore with you, because there was testimony  
21 that Hatten was the one -- in other words, none of the  
22 agents knew that phone was up in the room. And this may  
23 not make a difference, but you characterized that bedroom  
24 as Mr. Blackburn's bedroom, and I think it could also be  
25 characterized as the children's bedroom.

1 MS. KATZE: I think they were all staying in  
2 there. The Government characterized it as the children's  
3 bedroom, and it could be characterized as Mr. Blackburn's  
4 bedroom, right. Mr. Blackburn and the two children were  
5 staying in the bedroom, yes.

6 THE COURT: Right. So at least on this record,  
7 it doesn't appear to me that the agents knew anything  
8 about the location of that phone until Hatten volunteered  
9 its location, and Altamirano's testimony was that she went  
10 and got it and gave it to her.

11 MS. KATZE: I don't recall any other testimony,  
12 either, than that Hatten took her upstairs and got the  
13 phone in the bedroom and gave it to her.

14 THE COURT: How do you respond to Ms. Lizarraga's  
15 argument that agents are entitled to secure evidence until  
16 either a search warrant is obtained, or consent to search  
17 is given?

18 MS. KATZE: Consent to search would be an  
19 exception to the warrant requirement, but there has to be  
20 another exception to the warrant requirement. And just  
21 because they're going to get a search warrant, or they  
22 hope to get a search warrant, that's not an exception to  
23 the search warrant. So I disagree that if there's a phone  
24 and you want to look at the phone, that you can take the  
25 phone and hold it. That's still a seizure.

1           THE COURT: So the fact that it's a seizure  
2 totally negates the other officer's testimony that he  
3 obtained verbal consent from the Defendant to search  
4 through the phone, that he got a consent, and then did one  
5 other step that wasn't done at the time of the confession,  
6 but explained the form?

7           MS. KATZE: Well, I think that's a good question,  
8 because there's sort of two steps to that. Let's assume  
9 that Altamirano getting the phone without consent, taking  
10 that phone, that that's a seizure and it's an illegal  
11 seizure. So then, is that the end of it? Anything that  
12 flows from that is illegal?

13           Your question then, is -- I don't know if that's  
14 your question, but let's assume that the seizure is  
15 illegal. She brings the phone down to Langer. Can that  
16 illegality be purged, that tainted illegality be purged by  
17 then asking Mr. Blackburn for permission to search his  
18 phone.

19           I think the answer to that is, no, but I think  
20 that's another -- I think that's a really good question.  
21 I think that's something that should be included in the  
22 briefing. Yes, that's a good question.

23           THE COURT: Because in other words, at this point  
24 Langer's testimony wasn't uncontroverted, that at least in  
25 terms of asking verbal consent, he obtained it. He also

1 testified that he had a form, a consent form filled out.

2 And then he went the additional step and testified that he  
3 explained the form.

4 MS. KATZE: Yes.

5 THE COURT: So it seems to me like for you to  
6 prevail on that issue, then, you have to be right that  
7 Altamirano's taking the phone from Hatten constituted a  
8 seizure, which then did not allow the agents to do  
9 anything else.

10 MS. KATZE: I guess I would have to either be  
11 right on that and/or I would have to be right that if  
12 there was a nonconsensual entry into the home, that those  
13 are fruits of the poisonous tree.

14 THE COURT: Okay. So, go ahead. Those were the  
15 issues I just wanted to focus on now. Is there anything  
16 else you want to say now?

17 MS. KATZE: Well, with respect to the --

18 THE COURT: All the issues that are in.

19 MS. KATZE: Your Honor, I think some of them are  
20 obvious, and I'll address them in the briefing.

21 I mean, I think our position is that it's not a  
22 consensual entry just given the fact that we learned eight  
23 armed law enforcement agents come to the house at 7:15,  
24 and no matter what kind of nomenclature they use -- they  
25 call it a knock and talk -- I think it's the overbearing

1 presence of the agents when they wake people up.

2 And then additionally, evidence by -- I think  
3 Langer was the one that seemed pretty straight-forward  
4 about it, that there was no question that all those agents  
5 went in the home and secured the home and separated,  
6 monitored and were on top of the adults, and didn't let  
7 them leave. So I think it was actually a detention.

8 I think we need to -- I would say as far as what  
9 Detective Sabaugh said, I think Federal law trumps State  
10 law regardless. But the Fourth Amendment is obviously  
11 king in that area, so I think we have to address that.

12 And as far as the confession, I think the  
13 videotape speaks for itself. I have watched it so many  
14 times, and there's absolutely no way I see how there was  
15 ever, ever a time that Mr. Blackburn could have  
16 meaningfully read those Miranda warnings. He's a person  
17 who's never been arrested, he hasn't been in the criminal  
18 justice system, not that that should even matter. I mean,  
19 that's not the point.

20 THE COURT: No, but the point is, I'm sure  
21 opposing counsel would say if he did have a lengthy rap  
22 sheet, that he's been down that Miranda road before.

23 MS. KATZE: Right. And in this case, he has not  
24 been. But you look at the videotape, and from the moment  
25 Agent Breen gives him that piece of paper, Agent Breen is

1 talking, and then Detective Sabaugh is talking. And you  
2 do see that Mr. Blackburn, he's looking at Agent Breen,  
3 he's looking at Detective Sabaugh, and there are times  
4 when it does appear that he drops his eyes, but there's  
5 just no way -- let's say he has the sharpest reading  
6 skills, brain, doesn't have the slow processing issue that  
7 he has, there's no way he could read that. I couldn't  
8 read those seven rights and the paragraph at the end.

9           The fact is, it just seems like the way to avoid  
10 that is to read the Miranda warnings. And I realize that  
11 there is not a set way that you have to read it, but I  
12 think that way Agent Breen, or the Government, I should  
13 say, wouldn't be in this position.

14           And I think that it is such a critical decision,  
15 and those rights are so critical that to not have them not  
16 only not read to him, but absolutely nothing asked to  
17 ensure that he read them, that he understood them, that he  
18 waived them. It was referred to as a waiver sheet, not a  
19 Statement of Rights sheet, and he was asked to just come  
20 over and sign it. Literally not one question to try to  
21 gauge his comprehension.

22           And then, I mean, I hate to say it, but Agent  
23 Breen can call it an unfortunate turn of phrase, now that  
24 we're done with the silliness, but that kind of seemed  
25 like that's what law enforcement attitude was at that

1 moment in that room. Like, we want to get down to asking  
2 you questions about child pornography, this is silliness,  
3 and we treat it like silliness because we don't ever ask  
4 you any actual questions to gauge whether you, A,  
5 understand your rights, have read them, and, B, understand  
6 them and waive them. So, I think those are the issues.

7 THE COURT: Now, one thing Detective -- I saw  
8 this. How does this impact your analysis, if at all? But  
9 Detective Sabaugh, and it's in the tape, she did tell the  
10 Defendant that he doesn't have to talk to us.

11 MS. KATZE: But that's not enough, right. In the  
12 Miranda decision, there's a number of Constitutional  
13 rights that an individual has to be informed of. And just  
14 informing someone of one right -- I would just ask the  
15 Court to watch the tape again, or I'd be happy to e-mail  
16 to your court our little --

17 THE COURT: No, we've got the transcript.

18 MS. KATZE: Or I was going to say, if it's easier  
19 to look at the two minutes.

20 THE COURT: If you want to e-mail that, that's  
21 fine.

22 MS. KATZE: I'll e-mail that to you, because the  
23 Government keeps talking about how he multi-tasks. I have  
24 no idea what they mean by that. I never saw in the whole  
25 video him multi-tasking. In fact, I actually saw the

1 opposite. As opposed to Agent Breen initially during the  
2 Miranda warnings, where he's talking to him the whole time  
3 he hands him the form, when he's asking him to look at  
4 pictures, he'd hand him a picture, he'd ask him what's in  
5 the picture, Mr. Blackburn answers, and then the agent  
6 tells him what to write, and then the agent is silent, and  
7 Mr. Blackburn writes on the picture.

8           And so it just seems to me -- like, I don't know  
9 what they mean by multi-tasking, but it's a whole  
10 different approach. It just gives the impression to me  
11 like, let's just blow over these rights, because we want  
12 to get down to interviewing you, and now when we're  
13 interviewing you, we're going to use the techniques we  
14 learned by being friendly and calm and giving you time to  
15 do things so that we can get the most information out of  
16 you.

17           THE COURT: Now, one of the things, and if you  
18 want to address it in the briefing, feel free to wait  
19 until then, but you will need to respond to the point that  
20 since there was no "coercion," at least from the  
21 Government's perspective, in terms of the interview  
22 techniques, that if there were a Miranda violation, that  
23 doesn't prevent them from -- in other words, that doesn't  
24 exclude -- obviously the remedy is clearly excluding the  
25 confession, but the information they received from that

1 that led them to, say, the e-mails and stuff would still  
2 not be excluded. So, if you would address that issue that  
3 was raised.

4 MS. KATZE: Okay, I'll address that in my brief.

5 THE COURT: That's fine. I'm just saying, be  
6 sure to.

7 And then, there's one other thing. Part of the  
8 reason that I was asking the questions about the -- I  
9 think it's fair to say this would have been, if there was  
10 only evidence of child pornography, this would have been  
11 strictly a Federal investigation. If it had only been  
12 evidence of criminal sexual contact with a minor, it would  
13 have proceeded as a State investigation. The photographs  
14 suggest evidence of both, so in other words, it makes  
15 sense that there was kind of a task force; Federal/State.

16 But one of the -- and the reason I was asking  
17 this question is to determine, the evidence came out that  
18 there were separate State and Federal search warrants, and  
19 the State search warrants were executed around 7:00, I  
20 believe is what the evidence was, and of course those  
21 search warrants, the evidence that the State actors would  
22 have been looking for would have been evidence of the  
23 criminal sexual contact. And then two hours later, the  
24 Federal warrants were executed.

25 So my question to you is: Under the inevitable

1 discovery rule, would the execution of the State search  
2 warrant, and given the fact that this was a joint, they  
3 would have uncovered -- they would have found the  
4 cellphone sitting on the shelf in the children's room,  
5 because they would have been looking in that room. It was  
6 both the Defendant's room and the children's room.

7           So, would the inevitable discovery rule come into  
8 play where they would find the cellphone then, and then,  
9 of course, that would have been covered by if not the  
10 State search warrant, then the Federal search warrant that  
11 was to be executed two hours later?

12           MS. KATZE: I'll be happy to address that in my  
13 briefs. I think I mentioned in my response to the  
14 Government that they basically waived that argument. They  
15 did not bring that argument up. So I would argue that  
16 that argument is waived. But I think that it depends  
17 on -- well, we have to look at how they got the search  
18 warrants and the circumstances of that.

19           But, I mean, if the Court wants me to address it,  
20 I will. I just feel that that argument has been waived,  
21 because it has not been -- it was not addressed.

22           THE COURT: Right. But you've requested to do  
23 the additional briefing based on the way the evidence came  
24 in.

25           MS. KATZE: And I'm happy to address it.

1 THE COURT: In other words, the Government is  
2 entitled to address it, as well.

3 And then the final thing I want to talk to you  
4 about is procedure. I know -- in fact, my court reporter  
5 has told me that you already ordered a transcript, or  
6 somebody has.

7 MS. KATZE: Yes. I've asked -- I said that I was  
8 going to order it. So procedurally, I was just getting my  
9 calendar, because I was thinking if we could order it like  
10 a seven day, like the week rate, then what I thought --  
11 would you be willing to do this? If we order it in the  
12 week rate, then you give me two weeks to respond, and then  
13 the Government has whatever time you give them?

14 THE COURT: Two weeks. And then you get the last  
15 word.

16 MS. KATZE: Yes.

17 THE COURT: Is that acceptable to you, that  
18 procedure?

19 MS. LIZARRAGA: Yes, your Honor.

20 THE COURT: How about -- is two weeks sufficient?  
21 In other words, we could start the clock from the time my  
22 reporter gets the transcript prepared.

23 MS. KATZE: Yes. That would be great. So then,  
24 what if we could say a week -- well, Monday is a holiday.  
25 How about, could I have two weeks from the 19th of

1 October?

2 THE COURT: Just a second.

3 (A discussion was held off the record.)

4 MS. KATZE: I could also do a 14-day order. My  
5 office might like me better for that.

6 THE COURT: All right, let's do a 14-day order.  
7 So the transcript will be done in 14 days, and then do you  
8 want two weeks, an additional two weeks to form your --

9 MS. KATZE: Yes, if that's okay.

10 THE COURT: Sure. Is that adequate time for you?

11 MS. KATZE: I hope so. If it's not, can I ask my  
12 opposing counsel if I can have more time?

13 THE COURT: Sure. I mean, I've got some issues  
14 that I've got to -- they're in the hopper that I'm dealing  
15 with, as well, in addition to this case. Is that two  
16 weeks sufficient time for you?

17 MS. LIZARRAGA: Yes, your Honor.

18 THE COURT: And then, what do you want, one or  
19 two weeks to do a reply?

20 MS. KATZE: Can I have two weeks?

21 THE COURT: All right. So, transcript within two  
22 weeks, and then you have two weeks.

23 MS. KATZE: So two weeks from today is the  
24 21st. So I'll just -- can we just make it that?

25 THE COURT: Two weeks from the 21st.

1 MS. KATZE: Right. And then we'll start the  
2 clock then.

3 THE COURT: Right, we'll start the clock then.

4 MS. KATZE: Thank you.

5 THE COURT: All right. Is there anything else  
6 you want to cover today?

7 MS. KATZE: I can't think of anything else.

8 THE COURT: How about you?

9 MS. LIZARRAGA: Your Honor, if I could just  
10 quickly respond to one of Ms. Katze's points, and point  
11 out to the Court that with regard to the Defendant having  
12 no knowledge of the criminal justice system, I would just  
13 want to direct the Court's attention to Government's  
14 Exhibit 35. That was an e-mail that the Defendant sent on  
15 August 9, 2013, that attached a screen shot from his  
16 phone, and in this he's talking to the mother of his  
17 child, basically saying that he wants to rape that child,  
18 and so she ends up telling him that she's going to contact  
19 the FBI, and his response is: "Go ahead, you have no hard  
20 evidence."

21 So I think that that does show that he at least  
22 has some idea about the way that the criminal justice  
23 system works. I think it also clearly shows that he knows  
24 how to read. But I just wanted to point that out.

25 And I'm glad that the Court brought up the

1 inevitable discovery doctrine. We will certainly brief  
2 the Court on that. And with regard to the portions of the  
3 interview where the Defendant is multi-tasking, I'm happy  
4 in our brief to pinpoint the exact times during the  
5 interview that it's our position that he is actually  
6 multi-tasking.

7 THE COURT: Okay. All right, then. Well, I  
8 didn't need -- the original photos were returned, but I  
9 did pull those discs out, so I've got the CDs of the  
10 actual interviews. So I've got that.

11 And then, Ms. Katze, if you want to send an  
12 e-mail on the part you're relying on, that way we won't  
13 have to look through the entire thing. But I do have the  
14 entire interview that I can look at.

15 So with that, this matter has been well briefed  
16 and well litigated, and I'll await the additional  
17 responses, and then I'll issue a decision.

18 All right, thank you.

19 (Proceedings adjourned at 2:17 P.M.)

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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3  
4 UNITED STATES OF AMERICA, )

No. 14-CR-00129 WJ

5 Plaintiff, )

6 vs. )

7 MICHAEL DAMEON BLACKBURN, )

8 Defendant. )  
9

10 CERTIFICATE OF OFFICIAL COURT REPORTER

11 I, Mary K. Loughran, CRR, RPR, New Mexico CCR #65,  
12 Federal Official Realtime Court Reporter, in and for the  
13 United States District Court for the District of New  
14 Mexico, do hereby certify that pursuant to Section 753,  
15 Title 28, United States Code, that the foregoing is a true  
16 and correct transcript of the stenographically reported  
17 proceedings held in the above-entitled matter on October  
18 7, 2015 and that the transcript page format is in  
19 conformance with the regulations of the Judicial  
20 Conference of the United States.

21 Dated this 21st day of October , 2015.

22  
23 MARY K. LOUGHRAN, CRR, RPR, NM CCR #65

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